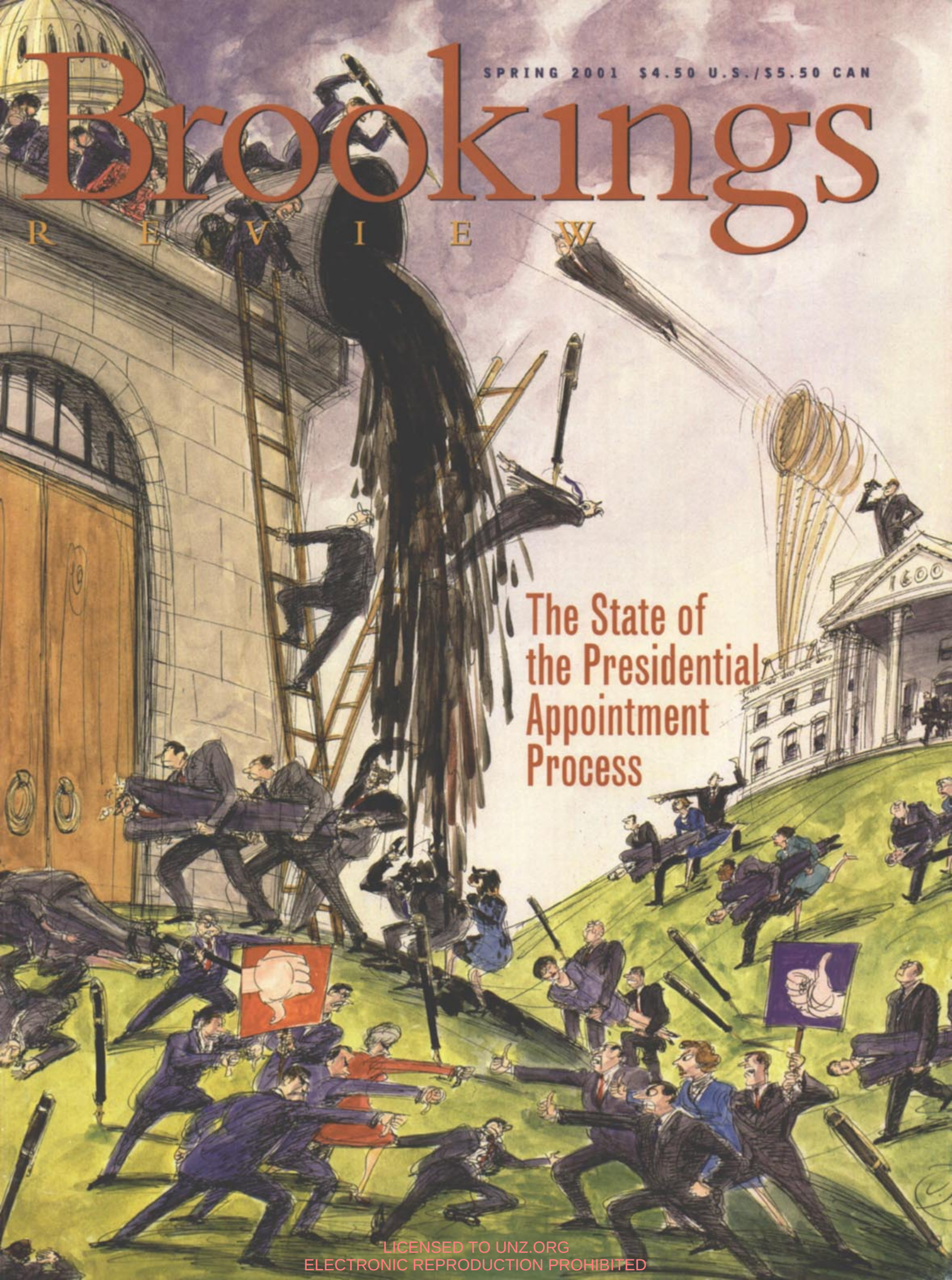




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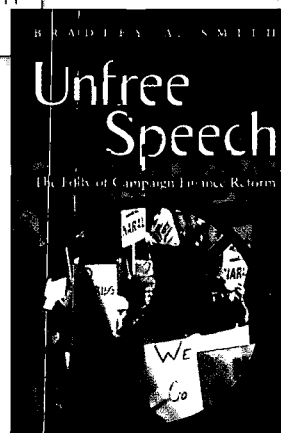
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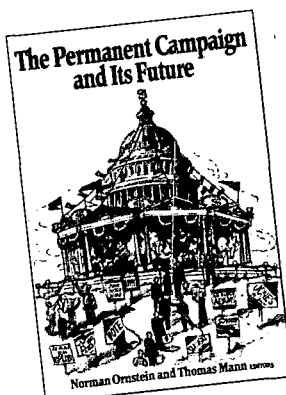
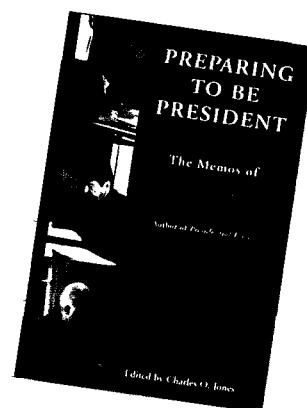
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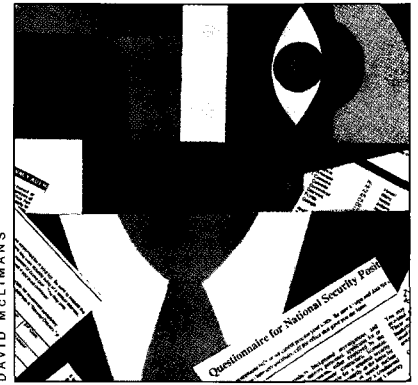
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STEVE MCCRACKEN



DAVID MCLIMANS

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Nancy Kassebaum Baker and Franklin D. Raines

COVER ILLUSTRATION
BY VICTOR JUHASZ

Renewing Citizen Service

George W. Bush took the oath of office on January 20, 2001, the first president elected in the 21st century. Unfortunately, relatively few members of the new administration went to work that week, or in the weeks that followed. In fact, if history is any guide, it will be nine or ten months before the new president is firmly in control of the government. That is roughly when the last of President Bush's nominees to the subcabinet and independent agencies are likely to complete the presidential appointment process. Only then can the real work of the administration fully begin.

Americans may be dismayed by the delays, but they should not be surprised. Since 1960, every president has taken longer and longer to complete his appointments. President Kennedy's top appointees were not in place until mid-April, Nixon's until mid-May, Carter's until July, Reagan's until August, Bush's until mid-September, and Clinton's until October. President Bush will be lucky to have a full administration by November.

The delays reflect many factors, not least that the number of positions open for appointment has grown steadily over the decades. In 1961, for example,

Kennedy filled a grand total of 196 Senate-confirmed appointments in the cabinet departments. Thirty years later, Clinton had nearly 800 to fill. And these figures do not include the growing number of posts in the independent agencies, the advisory board positions, and lesser political posts, which now number in the 5,000 range.

The review process has also grown more onerous and complex with each passing scandal. The number of forms has increased, as has the list of questions and disclosure requirements. And those questions now penetrate more deeply—and some would say intrusively—into a broader range of personal issues than ever before. At a time when our government is vigorously pursuing improved ways to ensure the privacy of our citizens on the Internet, it seems ironic that we force potential leaders of the executive and judicial branches to reveal ever more details about their personal lives as a condition of public service.

The increasing complexity of the process is more than a bureaucratic nuisance. It also has reduced the number of talented Americans willing to accept the call to presidential service. Presidential recruiters report that it takes more calls to find candidates willing to subject themselves to the process and more work to keep candidates from bolting once the process begins. The number of initial turndowns is rising, as is the number of later withdrawals. A recent survey of top executives in the private sector, conducted for The Presidential Appointee Initiative, found that more than a fifth of those who'd been considered for a presidential appointment had turned it down.

Nancy Kassebaum Baker, a former U.S. senator from Kansas, and Franklin D. Raines, a former director of the Office of Management and Budget, are co-chairs of The Presidential Appointee Initiative advisory board.



BOTH PHOTOS: FRED DEWS/BROOKINGS INSTITUTION

Service

It is little wonder that talented people would opt out of a process that opens every detail of their lives to the fullest public scrutiny or that they might be frightened off by a White House questionnaire that asks whether they "have ever had any association with any person, group, or business venture that could be used, even unfairly, to impugn or attack your character and qualifications for a government position?"

Filling out these forms, answering the scores of exhaustive questions, and enduring the reviews and background checks and investigations now routinely takes half a year or more. That's a lot of time out of the life of these busy people, and it's simply an obstacle course that too few choose to enter.

We know that delays are not the only reason for America's civic and corporate leaders' increasing reluctance to serve. Public cynicism about government also plays a big part. Why step out of a distinguished career to serve in a job that most Americans think is not worth the time and trouble?

Although the Founding Fathers most certainly expected the time spent in citizen service to be inconvenient, even burdensome, they did not expect the process of entering office to be so long, intrusive, and frustrating. They clearly wanted presidents to make speedy nominations and the Senate to discharge its advice-and-consent function, aye or nay, with equal dispatch.

Two hundred years later, the presidential appointment process

is increasingly incapable of fulfilling its most basic responsibility: recruiting able citizens for government service. More and more citizens are saying no, and those who do say yes are being forced to endure a process that is more torturous than the Founders ever could have imagined.

What can be done? We believe that a short list of reforms, some of which require our elected leaders to forgo or relax traditional prerogatives, can yield dramatic improvements in the appointment process and in the quality of people willing to enter public service at the highest levels.

Considerable agreement already exists on a short list of reforms that could cut the current delays by several months, including a modest broadening of the financial disclosure categories for the president's most senior nominees and development of an EZ disclosure form and fast-track FBI field investigations for selected nominees further down the appointee hierarchy. The recent doubling of the president's salary to \$400,000 also creates room for augmenting salaries in hard-to-recruit appointee positions.

The delays would be cut even further if the Senate and White House can restore comity to their joint review process. It is not clear whether doing so requires a constitutionally acceptable time limit on the process or a sharp reduction in the total number of presidential appointments. What is clear is that reducing delays must involve a genuine dialogue between the two branches.

Nothing perhaps can undo decades of cynicism and deterioration of the appointment process in a moment. Overcoming that painful legacy—and its harmful effects on the quality of citizen leadership in government—will require leaders on both sides of the aisle to come together to make public service more attractive. In this era of handshakes across the party divide, we can think of no other issue that deserves bipartisan attention more than the need to renew citizen service as a basic democratic duty.

The articles in this special issue of the *Brookings Review* on The State of the Presidential Appointment Process were commissioned by The Presidential Appointee Initiative (PAI). Founded by the Brookings Institution in 1999 with funding from The Pew Charitable Trusts, PAI is working to encourage talented citizens to seek and accept presidential appointments and to build support for reforms that will simplify and expedite the appointment process. The opinions expressed here are those of the authors and do not necessarily reflect the views of The Pew Charitable Trusts.

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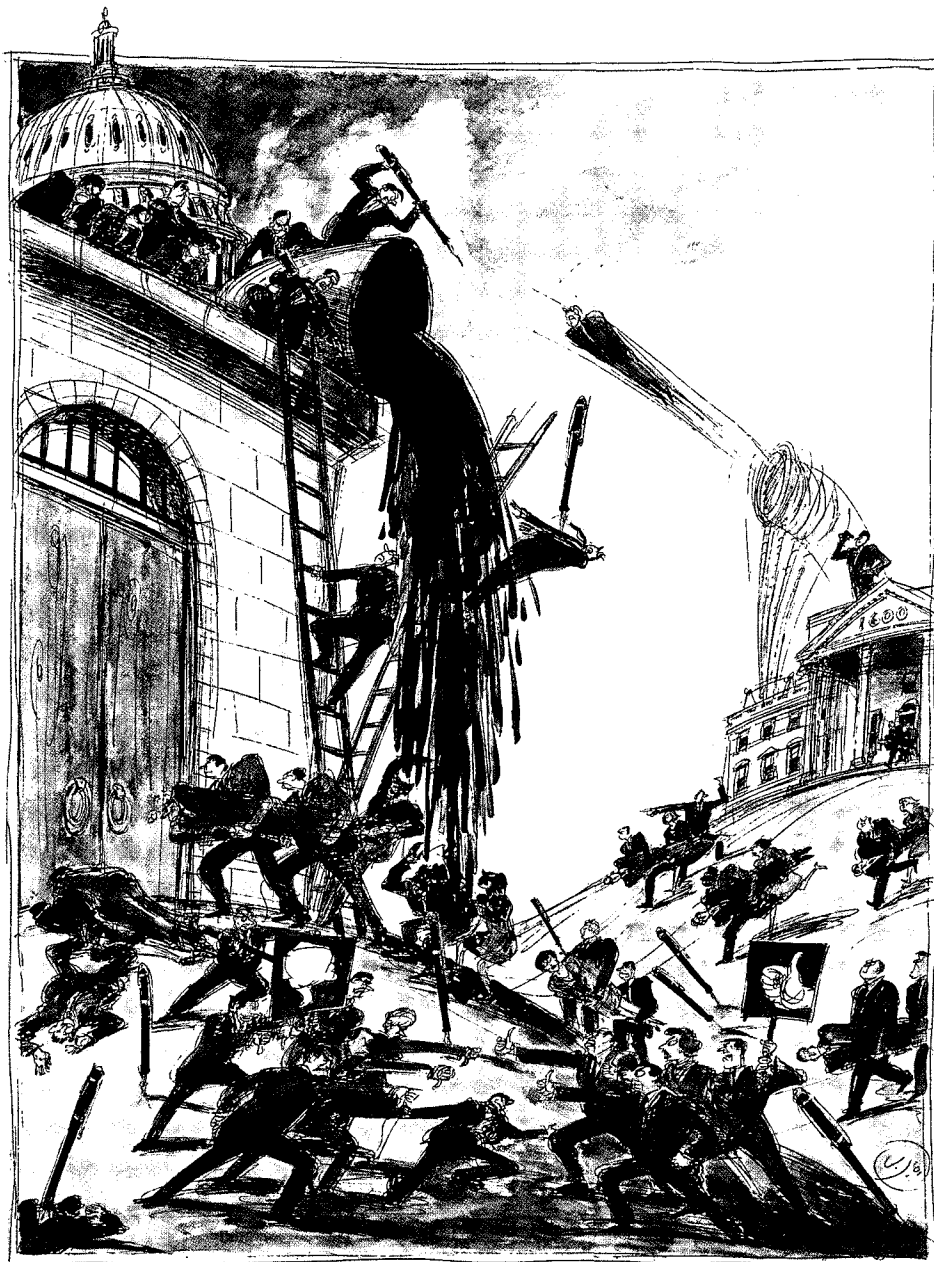
"Nasty & Brutish Without Being Short"

by G. Calvin Mackenzie

The State of the Presidential Appointment Process

The presidential appointment process is a national disgrace. It encourages bullies and emboldens demagogues, silences the voices of responsibility, and nourishes the lowest forms of partisan combat. It uses innocent citizens as pawns in politicians' petty games and stains the reputations of good people. It routinely violates fundamental democratic principles, undermines the quality and consistency of public management, and breaches simple decency. Republicans and Democrats, legislators and chief executives, journalists and special interests all share responsibility for allowing one of the rare and genuine inventions of American political creativity to fall into a state of malignancy.

G. Calvin Mackenzie is guest editor of this special issue of the Brookings Review. He is Distinguished Presidential Professor of American Government at Colby College.



VICTOR JUHASZ

This special issue of the *Brookings Review* examines the contemporary appointment process from several perspectives. But all the articles share the same concern: at a time when the quality of political leadership in government matters more than ever, the principal procedures for ensuring that quality are less reliable than ever.

How did we get into this distressing condition? What is wrong with the contemporary appointment process? And what can we do about it?

The Empty Chairs

The evolution of the presidential appointment process over the years, described elsewhere in this issue, has been far from happy. A quick overview

suggests the extent of its current shortcomings, beginning with its failure to meet its simplest responsibility: to fill the top offices of the government.

During the spring of 1997, 15 important countries had no U.S. ambassador. Ottawa had gone almost a year without one; Bonn almost ten months, Moscow almost five, Tokyo almost three, Paris almost two. Things were not much better at home. Nearly 250 of the U.S. government's 726 most senior jobs—more than a third—were unfilled. The average appointee vacancy rate in the executive branch for all of 1997 was 25 percent. One of every eight federal judgeships was vacant. The Federal Election Commission was unable to get a quorum for much of 1998. The Food

and Drug Administration had no commissioner for 18 months. The nation went for years without a surgeon general. This is now the norm. Vacancies in appointed positions are a prominent feature of the contemporary Washington landscape.

Moreover, the attempt to fill appointed positions moves at a snail's pace—and it gets slower all the time. The data on this constitute one of the clearest and most consistent patterns in all of political analysis. The time required to fill presidentially appointed positions at the beginning of new administrations has grown steadily over the past 40 years, from 2.4 months in the Kennedy administration to 8.5 months in the Clinton administration. Of appointees who served between 1964 and 1984, only one of every twenty reported spending more than 6 months in the appointment process. Of those who served between 1984 and 1999, that share had grown to almost one in three. Every component of the process now takes longer than ever.

Frightening Away Talent

The ordeal of being appointed repels the successful and creative people needed to run a modern government. For many positions it now takes six months to a year just to find a nominee willing to serve. Some people agree to be considered, then withdraw when they find out how intrusive and extensive the scrutiny has become. Some go through all the investigations and questionnaires, then withdraw because there is still no end in sight. Talented people like Anne Hall, Bobby Inman, Stanley Tate, Peter Burleigh, and Laurence Pope all gave up in frustration.

Once a president locates willing appointees, the process mistreats—some would say abuses—them. William Gould was a Stanford law professor and a distinguished labor lawyer when he agreed to be President Clinton's nominee to head the National Labor Relations Board in May 1993. He dutifully informed the Stanford administration that he would take a leave from his teaching and made the usual plans to move to Washington. But his appoint-

ment was not confirmed for ten months, leaving him in a prolonged, uncomfortable limbo. Some opponents of his views on labor issues circulated charges that he had run up large gambling debts. The rumors were unfounded, but putting them to rest took several weeks of "investigation" during which he heard little from the White House and almost nothing from the Senate.

This was no aberration. Anthony Lake, who endured a similar experience after his selection as CIA director, described a contemporary nomination as little more than a "political football in a game with constantly moving goal posts." The process, he said, is "nasty and brutish without being short."

How Can Presidents Be Accountable?

The current appointment process undermines the accountability of the president to the American people. Imagine this: after a lengthy search, you are aggressively recruited to lead a large corporation. The hiring committee tells you that it has chosen you because it admires your vision of what the company can become. It wants you to do whatever is necessary to increase the company's profits and to ensure its future strength. This is a job you've been seeking, so you're anxious to start and you begin thinking about the kinds of people you'll need to recruit to head up the company's important divisions.

But then the hiring committee says, "Oh, by the way, did we mention that all of your top personnel choices will have to be approved by a committee that includes some of your worst enemies, any one of whom can blackball any of your selections?"

Who would be willing to run a company under those conditions? Who would be willing to be held accountable for its performance? Yet that is precisely the situation that modern American presidents face. The American people will hold them accountable for their leadership of the government, but in a system that now routinely denies them the freedom to pick their own management teams.

Relentlessly Revolving Doors

The appointment process also exacerbates turnover and inconsistency in leadership. A 1994 GAO report examined turnover in 567 Executive Schedule positions from 1981 to 1991. In the 409 positions with no fixed term of office, the incumbents' median length of service was only 2.1 years. Appointees in eight departments had median tenures of less than two years; the lowest was 1.6 years. Between 1981 and 1991 the Commerce Department had seven assistant secretaries for trade development, the Justice Department seven deputy attorneys general. In 15 years the Federal Aviation Administration had seven appointed and four acting administrators. In 14 years the Federal Housing Administration had thirteen commissioners. And the General Services Administration had eighteen administrators in 24 years. Could anyone reasonably argue that this is a sensible way to manage a large and complex government?

The Challenge to Majority Rule

Today's appointment process undermines the central democratic principle of majority rule. The U.S. Senate, which must approve presidential appointments, is the least representative legislative body in the democratic world except for the British House of Lords (and the Blair government has been dealing with that). Every state gets two votes, regardless of size. In 1787 the largest state had 19 times the population of the smallest. Now the ratio is 69:1. Today, half the Senate is elected by 15 percent of the American people.

And the problem is only getting worse. Almost all the population growth in the United States in the foreseeable future will be concentrated in a few populous states. By the middle of the next century, as few as 5 percent of the population may well have majority power in the Senate. Even now, only 10 percent of the U.S. population elects 40 percent of the Senate. By using or threatening a filibuster, senators representing little more than 10 percent of the nation can block presidential appointments.

As the Senate has grown more ener-

getic in its opposition to presidential personnel nominations, its own malapportionment and undemocratic practices have become more glaring and distressing anomalies. A single senator can prevent unanimous consent agreements and place a hold on a nomination. A committee chair can kill a nomination, as Jesse Helms killed William Weld's posting to Mexico, by simply declining to hold a hearing.

Insider Government

The singular promise of the American approach to filling top positions in government has always been to allow elections to blow fresh breezes through Washington, to provide infusions of new blood for the body politic. Whatever cost this approach might impose in diminished professionalism and inconsistencies in administration would find due compensation in its constant replenishment of energy and enthusiasm.

Perhaps that was once the case. It is no longer. Today most presidential appoint-

The problem could

ments offer little in the way of a "fresh breeze" or "new blood." Instead, our government is now largely run by a governing class. A growing majority of appointees these days comes from the Washington metropolitan area, especially from think tanks, congressional staffs, and special interest groups and trade associations. A Presidential Appointee Initiative study of appointees in the past three administrations found that 58 percent were working inside the Washington beltway when they were appointed.

In 1998, for example, President Clinton made three appointments to the International Trade Commission. Thelma Askey came from her job as staff director of the House Ways and Means Trade Subcommittee; Steve Koplan had been a trade specialist for the AFL-CIO and then a lobbyist for Seagrams; Jennifer Hillman was general counsel to U.S. Trade Representative Charlene Barshefsky. Moving to their new jobs meant simply crossing the street.

Political Bypass Operations

The breakdown of the contemporary appointment process is causing presidents to avoid it altogether in filling positions. Senate aggressiveness over appointments is leading, ironically, to a shrinking Senate role. The simple reality is that presidents are unwilling to play a game that they often lose. So they do what losers usually seek to do: change the rules—or change the game.

To avoid confrontations, presidents delay making appointments, choosing instead to leave positions in the hands of acting officials or to make recess appointments. The past four administrations have averaged nearly 20 recess appointments a year. In February 1998 “acting” officials held one of every five cabinet department jobs that require Senate confirmation—64 out of 320 slots. For most, the administration had not even sent a nomination to Capitol Hill. Of the 64 acting officials, 43 had served beyond the 120-day limit imposed by the federal Vacancies Act.

ments an executive prerogative. Take the legislature out of the process. Let the president choose his own appointees and be held accountable for their collective performance at election time. Appointees would have to abide by the law in their actions, and they could be impeached. But they would be the president’s appointees.

A second option is to require Senate approval for fewer appointees, either by reducing the number of presidential appointees (both the 1989 Volcker Commission and the 1996 Twentieth Century Fund task force recommended reducing the number by a third) or by limiting political appointments to the top few positions in each department and to their immediate special assistants. The latter approach would cut the number of appointees substantially, replacing them with career senior executives—as in most other democracies.

A third option, a less radical variant of the second, has been the choice of most panels and reform commissions

Ethics laws, especially the post-employment restrictions, could be made less draconian and decriminalized. Nominees’ financial disclosure forms and other reports and questionnaires could be simplified and reduced in number. Confirmation hearings could be waived for noncontroversial appointments. A new Senate Office of Confirmations could centralize and streamline the reviews of nominees before committees hold confirmation hearings. Appointee salaries could be increased to attract more talented people and keep them longer. Appointees could be given a salary bonus for every year on the job after the first two. An office could be created to provide transition assistance and orientation for new appointees.

A final set of options—equivalent to taking two aspirin and calling the doctor in the morning—is merely hortatory. We could exhort presidential candidates to do a better job of transition planning or even name their cabinets before the election. We could urge presidents to devote

not be clearer. The appointment process does not work.

John C. Keeney headed the Justice Department’s Criminal Division for two and a half years before a nomination was finally sent to the Senate in 1999. Jonathan L. Fiechter served from 1992 until 1997 as acting director of the Treasury Department’s Office of Thrift Supervision, without ever being nominated. The FDA was officially leaderless for 18 months before Jane Henney was confirmed in November 1998.

What to Do?

The problem could not be clearer. The appointment process does not work. It doesn’t accomplish what it should and it does many things it shouldn’t. Would any other American institution tolerate a process that so badly served its substantive and administrative purposes? What are the options for solving the problem?

One approach—that chosen by most other national democracies—would be to end the confirmation requirement completely. Make executive appoint-

that have studied the appointment process over the past two decades. It would do away with many of the worst defects of the current system, by, for example, eliminating, or at least putting strict time limits on, Senate “holds” or by prohibiting Senate filibusters on appointments. Through a fast-track process, the Senate would have to vote up or down on a nomination within a fixed time, say 45 or 60 days, or, like the old legislative veto, confirmation would occur automatically unless the Senate by majority vote rejected a nomination within 45 days of its receipt. Another possibility would be to limit the confirmation requirement to executive schedule appointments and judges.

Numerous lesser solutions have also been proposed, again with most coming from earlier reform efforts. Personnel staffs and investigatory agencies could be augmented during presidential transitions to better handle the crunch. The FBI full-field investigation could be rationalized, so it is not one-size-fits-all.

more attention to team-building and to making public service more family friendly. We could encourage participants to exercise greater civility in the appointment process. We could press the media to exercise more balance and caution in reporting on appointment matters.

Past Time for a Change

The contemporary presidential appointment process is slower, more cumbersome, more contentious, more repellent to talented Americans, and more distant from the purposes of good government than it has ever been. For too long we have turned away from its excesses, accepting them as the inevitabilities of high-stakes politics. It is past time to begin rebuilding and reinvigorating the way executive and judicial personnel are selected. If we merely continue doing what we’ve been doing, then we will surely continue getting what we’ve been getting. That wasn’t good enough for the late 20th century, and it certainly won’t be good enough for the 21st. ■

by E. J. Dionne, Jr.



‘Bureaucrats’

Can’t Public Servants Get Some Respect?

The most moving moment at either party’s national convention in 2000 was a resolutely nonpartisan speech that evoked a moment when taking a job in government was seen as far more than, well, just taking a job. “When my brother John and I were growing up,” said Caroline Kennedy Schlossberg, “hardly a day went by when someone didn’t come up to us and say: ‘Your father changed my life. I went into public service because he asked me.’”

Note that lovely phrase “public service.” Ms. Schlossberg was not exaggerating or being unduly romantic about the spirit of John F. Kennedy’s New Frontier, which both shaped its time and reflected it. Serving in a new administration, whether on the White House staff, in the cabinet, or in a less grand post, was not simply an obligation or, in the current ugly phrase, “a ticket to punch.” It was also a source of excitement. And so, as Godfrey Hodgson put it in his biography of Daniel Patrick Moynihan, “a varied population of political and intellectual adventurers” descended on Washington in the winter of 1960 and 1961.

“They came,” Hodgson writes, “from New York and San Francisco law firms, from state and city politics across the nation, from the growing world of foundations and pressure groups, and of course from the great graduate schools, swollen by the postwar demand for academic manpower.” Hodgson understood that this crowd of adventurers weren’t saints, but neither were they mere opportunists: “The mood,” he says, “was strangely blended from ambition and idealism, aggressive social climbing and a sense of youthful adventure.”

The Diminished Promise of Citizen Service

No doubt many have entered the new Bush administration with that same sense of vigor and adventure. Long lists of Republican office seekers, out of executive power for eight years, testified to the continuing lure of executive positions, from the highest posts to the lowest. Still, it’s difficult to hear Schlossberg and to read Hodgson’s account and not sense a shift in the spirit of the times. Forty years on from that winter of the New Frontier, public service in the executive retains its

E.J. Dionne, Jr., is a senior fellow in the Brookings Governmental Studies program.

allure, but not quite the same sense of glamour or promise.

As columnist Mark Shields pointed out at an event at Brookings in late December, most politicians who have won the presidency over the past quarter-century did so by running against “the government in Washington.” Bush was no exception. As a result, expressing an open desire to serve in that very government and an open belief that it might accomplish large things flies in the face of what is now deeply ingrained conventional wisdom.

Yet no country is as dependent as ours on “citizen service” in its national administration. None relies so heavily on people who might be called amateurs, as against career civil servants, to govern. From the beginning of the republic we’ve operated on the assumption that a professional ruling class is problematic and to be avoided. Government, according to this view, should be refreshed periodically by tides of new leaders with new ideas and untapped energy—the very spirit captured so well by Hodgson and Schlossberg. The assumption continues to prevail that citizen service is essential to the health of civil society—in this case, citizen service at the very highest levels—because citizen service links the government to the rest of the society in a way a purely professional bureaucracy could not.

Professionalism vs. Politics

That’s the theory, anyway. In truth, our attitude toward those citizen servants reflects an odd balance of ideas. Our history is one of ambivalence as between professionalism on the one side and politics on the other. We admire the independence and expertise of professionals, yet we regularly denounce them when they work for the government. It is no accident that the famous Republican campaign commercial of 2000 in which the word “rats” appeared ever so briefly on our television screens—conveying or not conveying a “subliminal” message,

depending on whom you believed—was in fact depicting the word “bureaucrats” at that critical and controversial moment. However honored they might occasionally be, the day-to-day civil servants who make the American government run do not enjoy the honor or prestige of their counterparts in France or Germany, Britain or Japan.

Yet if we denounce bureaucrats, we also denounce political appointees. This is obvious from the normal parlance of politics and journalism. We condemn certain agencies of government as “patronage dumping grounds.” We say we dislike the “political spoils system.” We insist on praising “independent, nonpartisan government.” Indeed, this was the impetus behind the civil service reform that, from the 1880s forward, took the awarding of tens of thousands of jobs “out of politics.” The premise, as James Q. Wilson put it in his classic work *The Amateur Democrat*, was that “the merit system and open competition should be extended to insure, insofar as is feasible, that general principles rather than private advantage govern the awarding” of government benefits.

These two traditions—a preference for political appointees over bureaucrats, a preference for civil servants over the beneficiaries of political patronage—are deeply rooted in our history. To understand the contradictions in our history is to understand our ambivalence today.

Jacksonian “Rotation in Office”

It’s worth remembering that the idea of wholesale changes in the government following the defeat of an incumbent party in an election was originally seen as a “reform” by the advocates of Jacksonian Democracy in the 1820s and 1830s. The followers of Jackson referred not to a “spoils system” but to a principle they held up as admirable and called “rotation in office.” The Jacksonians believed their political foes had come to regard holding the appointive offices of government as a right that could not be disturbed even by the electorate.

That’s what Andrew Jackson was against. “Office is considered as a species of property,” Jackson declared, “and government rather as a means of promoting individual interests than as an instrument created solely for the service of the people.” As Harry L. Watson summarized Jackson’s views in *Liberty and Power*, his admirable book on Jacksonian Democracy: “No one in a republic had an inherent right to public office...so no one could complain if he lost a public job in favor of someone more honest, more competent, or more in agreement with elected officials who carried a popular mandate.”

Jackson, as Watson notes, emphatically rejected the views of his soon-to-be Whig and former Federalist foes that “no one except a tiny elite had the training or experience to qualify for public office.” As Jackson himself put it: “The duties of all public officers are, or admit to being made, so plain and simple that men of intelligence may readily qualify themselves for their performance.” Jackson, as Watson notes, wasn’t arguing for the hiring of incompetents, but he did demand “that public duties be shared among the large body of qualified citizens to avoid the creation of an entrenched and corrupt bureaucracy.”

The notion that rotation in office was a mighty weapon in

the larger battle against privilege is nicely captured by historian Robert V. Remini in his study *Martin Van Buren and the Making of the Democratic Party*. Remini notes that the Democrats’ 1828 campaign placed heavy stress on the words “people” and “reform.” He writes: “The precise direction all this ‘reform’ was to take was not explained. There was no need to. The people were simply banding together to take the national government out of the hands of the favored few. They were claiming what belonged to them. They were dispossessing ‘the wise, the good and the well born.’”

In other words, America’s tradition of political appointees is rooted in a philosophical view of how democratic government can work best—and become more democratic in the process. If European democracies have a much shallower tradition of political nominations and a larger reverence for a career civil service, it is in part because none of the Western European democracies—many of which were not terribly democratic at the time—went through anything that quite resembled the Jacksonian Revolution. Hard as it was for reformers to accept the idea later, the creation of a system of political patronage was originally seen as a way to foil both corruption and elitism. Despite abuses, Watson is correct in seeing rotation in office as “a solidly democratic principle that brought greater openness to government.”

Civil Service Reform: Depoliticizing Public Service

But there were, indeed, abuses, and they grew over time. The Jacksonian system was “susceptible to political manipulation,” as Watson acknowledges. Those abuses and manipulations helped unleash the other great American public service tradition—civil service reform and a preference for expertise. It reached high tide between the 1880s and 1920.

Historian Robert H. Wiebe picks up this thread in his excellent study of the period, *The Search for Order*. In contrast to the Jacksonians, the new reformers saw removing government jobs from the political realm as “democracy’s cure.” Wiebe wrote: “By denying politicians the spoils of office, the argument ran, civil service would drive out the parasites and leave only a pure frugal government behind. The nonpartisanship inherent in civil service would permeate politics, and as party organizations withered away, the men of quality now excluded by the spoilsmen and unscrupulous businessmen would resume their natural posts of command.”

It’s also important to see that civil service reform and enhanced faith in a professionalized bureaucracy arose at a moment of growing faith in scientific rationality and a belief in the importance of expertise. The professionals of the period, Wiebe observed, “naturally conceived of science as a method for their disciplines instead of a set of universal principles.” Or, as the sociologist Max Weber put it in his famous essay on bureaucracy: “Naturally, bureaucracy promotes a ‘rationalist’ way of life, but the concept of rationalism allows for widely differing contents. Quite generally, one can only say that the bureaucratization of all domination very strongly furthers the development of ‘rational matter-of-factness’ and the personality type of the professional expert.”

Still a Healthy Tension?

Where do our dueling traditions of political appointments and professionalized bureaucracy leave us today? The professional view suffered body blows during the 1960s from both the left and the right. The rise of the idea of “participatory democracy” on the New Left suggested that the distant bureaucrat claiming vastly more knowledge than average citizens needed to be taken down a peg or two. The War on Poverty’s goal of “maximum feasible participation” suggested that real expertise could be found only on the streets and in the neighborhoods. On the right, George Wallace’s attacks on “pointy-headed bureaucrats with thin briefcases full of guidelines” nicely captured the conservative rebellion against experts—and, in the case of Wallace and his followers, especially those pushing for new programs of racial inclusion.

But if the bureaucrat has not fared well in public esteem in recent years, neither has the average political appointee. Politics and government still do not enjoy the prestige they did when Caroline Kennedy Schlossberg’s father was president. The tendency in both political parties, described well by Martin Shefter and Benjamin Ginsberg in their book *Politics by Other Means*, is to fight political battles through the courts, press disclosures, and congressional investigations. Whatever the merit or utility of these approaches, they have had the effect of making the never-easy life of the political appointee far more difficult—and far less attractive.

It is thus striking, and not surprising, that young people devoted to public service tend less than ever to carry out that service through government—in either civil service or political posts. As Paul C. Light has pointed out, the trend among young people oriented toward service is to seek to reform institutions and change society through the nonprofit sector rather than through government itself. Part of the problem, as Light points out, is the difficulty government has under current rules and practices in offering the flexibility and work opportunities available in the nonprofit sector. But it’s also true that the idea of government service as an adventure, described so well by Hodgson, is about as fashionable as the now late, lamented Oldsmobile.

At its best, the American tradition of tension between the political and the professional control of government is highly productive. The Jacksonian instinct that elections should matter and that there should be a significant degree of political control—meaning democratic control—over the bureaucracy is right. But the desire for genuine expertise in the right places is also right. The president, and the people, need military strategists, research scientists, lawyers, economists, and environmental specialists who will feel free to tell the truth as they see it and inform decisionmaking. A democratic government cannot be effective if it changes capriciously from one administration to another. The American tradition creates a constant bat-

tle between the democratic impulse and the impulse for efficiency and predictability. This tension is not only useful, but necessary. The Jacksonian principle insists that in a democracy, there is not a bright line between “the government” on the one side and “civil society”—the array of communal institutions independent of government—on the other. If a government is not rooted in, and does not draw on, civil society, it can be neither democratic nor effective.

A Plague on Both Your Houses

It’s not at all clear that the tension between our traditions is serving us well today. At most points in our history, at least one side of the government (the politicians or the professionals) enjoyed some claim on public esteem. Now it can be argued that neither does. The Jacksonians lifted up the political appointee to put a check on the arrogance of expertise. The civil service reformers lifted up expertise to put a check on political abuses. Now putting down both sides is more the rule.

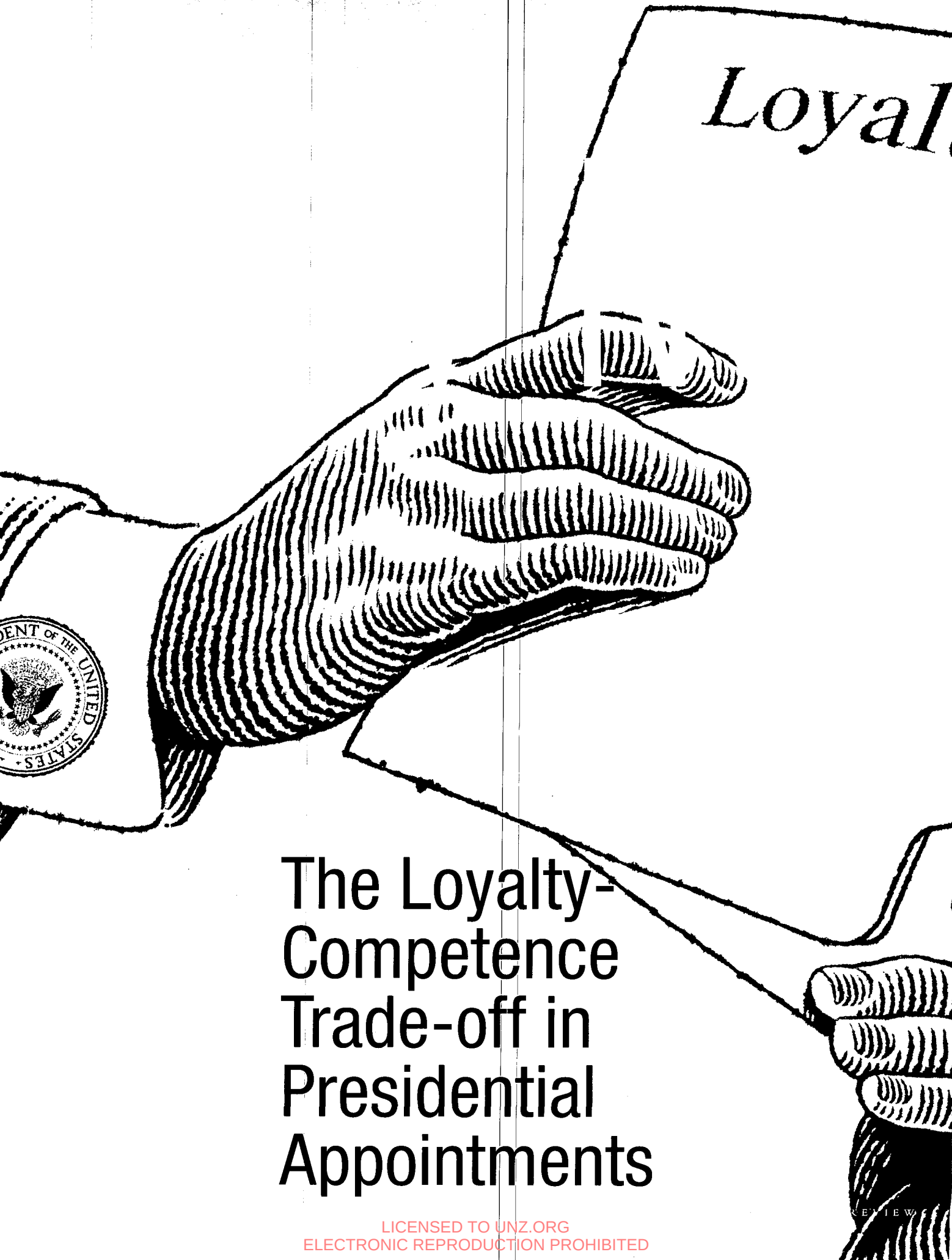
And the rise of a specifically presidential bureaucracy has in some ways divided the executive branch itself, aggravating its problems and the problems of those

If a government is not rooted in, and does not draw on, civil society, it can be neither democratic nor effective.

who work for it. As the political scientist Nelson Polsby has argued, one of the most interesting developments of the past half-century “is the emergence of a presidential branch of government separate and apart from the executive branch.” It’s the presidential branch, Polsby writes, “that sits across the table from the executive branch at budgetary hearings, and that imperfectly attempts to coordinate both the executive and legislative branches in its own behalf.”

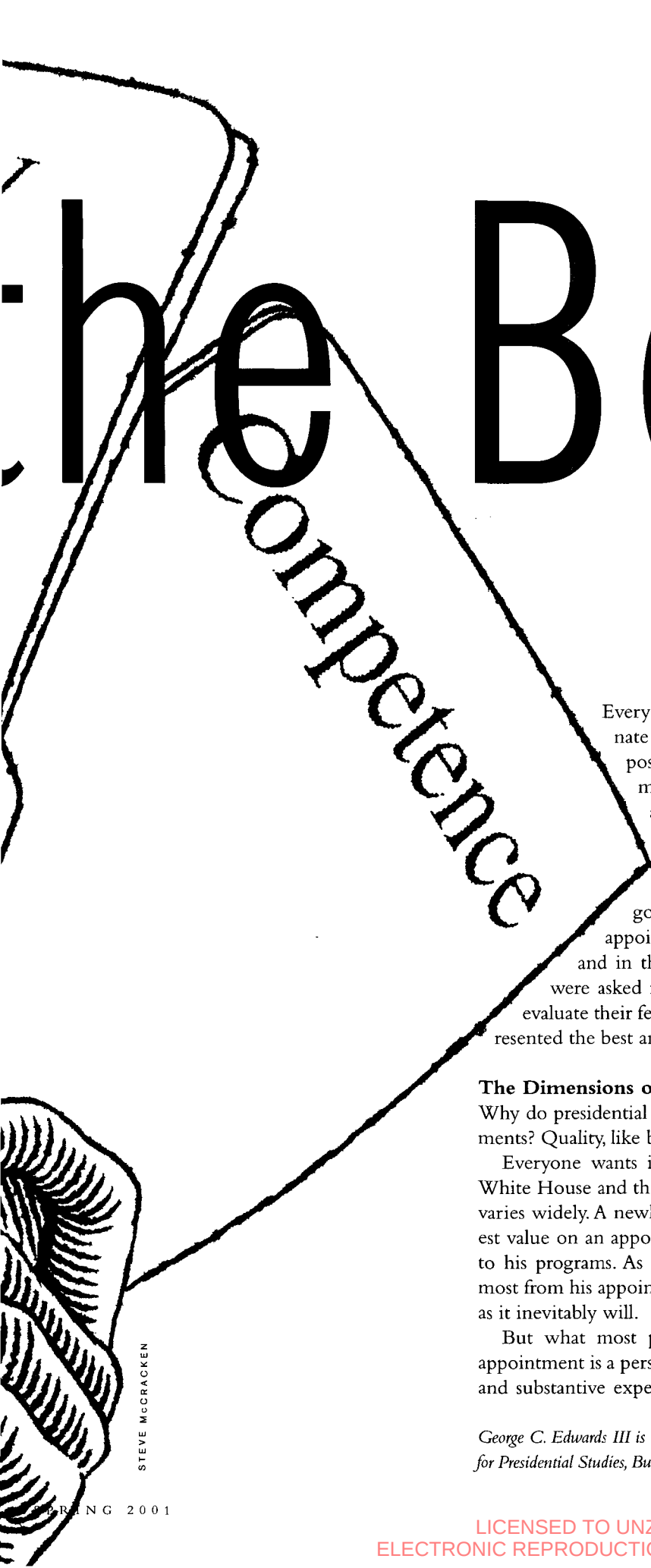
In *The Presidency in a Separated System*, Charles O. Jones makes a parallel point: that “the mix of career ambitions represented by presidential appointees may well bring the outside world to Washington, but there is no guarantee that these officials will cohere into a working government.” Jones sees the president as “somewhat in the position of the Olympic basketball coach. He may well have talented players but lack a team.”

None of this means that George W. Bush or any future president will have trouble filling his (or, someday, her) government. None of it means that the country lacks the “practical idealists” of whom Al Gore liked to speak. But a government as peculiarly dependent as ours is on the willingness of citizens to interrupt the normal trajectory of their lives to devote themselves to government service needs to worry that it is not nourishing either of our great traditions of public service. When the political tradition has faltered, we have been able to call on our civil service tradition. When expertise falters, the politicians can step in to right the balance. But when both traditions fail, where do we turn? It would help to have a president who drew people to public service because he asked them to do it and because he made it an adventure in which ambition and democratic idealism could coexist. ■



Loyal

The Loyalty- Competence Trade-off in Presidential Appointments



The Best?

by George C. Edwards III

Every new presidential administration promises to nominate highly talented, well-qualified people to fill appointed positions in the executive branch of the federal government. Yet every president makes more than a few appointments that do not satisfy the National Academy of Public Administration's call for "able, creative, and experienced people," who will serve as "the most important ingredient in the recipe for good government." Indeed, when 435 senior-level appointees in the second administration of Ronald Reagan and in the administrations of George Bush and Bill Clinton were asked recently by Paul C. Light and Virginia L. Thomas to evaluate their fellow appointees, only 11 percent agreed that they represented the best and brightest America has to offer.

The Dimensions of "Quality"

Why do presidential administrations so often fail to make quality appointments? Quality, like beauty, is in the eye of the beholder.

Everyone wants integrity, of course. Beyond that, however, how the White House and the American public at large view quality appointments varies widely. A newly elected presidential administration places the highest value on an appointee's unwavering commitment to the president and to his programs. As presidential recruiters see it, what a president needs most from his appointees is loyalty—especially when the going gets rough, as it inevitably will.

But what most people mean when they discuss the quality of an appointment is a person's ability in a wide variety of areas. Intellectual skills and substantive expertise are essential. Political skills—prowess in dealing

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with the press, Capitol Hill, the courts, state and local officials, and interest groups—are also key. Requisite managerial skills are many and varied: planning, organizing, and motivating employees in a bureaucracy, creating open communication with subordinates and good working conditions for employees, and developing administrative strategies for accomplishing the president's goals. Strong interpersonal skills include personal stability, a sense of self-esteem, flexibility, a tolerance for conflict, the ability to accept criticism, and a sense of duty.

The tension between the White House's need for loyal and committed

are...recalcitrant adversaries, saboteurs-in-waiting, obstinately committed to existing programs, and resistant to new policy initiatives."

These fears have at least a theoretical basis. The agendas of executive departments and independent agencies have been set by laws that predate the president's arrival in office—and that serve as a force for continuity rather than change.

For their own reasons (usually political), Congress and the White House have historically given great leeway to government agencies in implementing public policy, granting them significant influence over the rules, procedures, design, and substance of agency action.

some lengths to constrain the exercise of bureaucratic discretion. It requires clearance of regulations and congressional testimony, limits agency budgets, and restricts procurement and other spending. Perhaps most important, it has tried to control personnel decisions more centrally and deepened the penetration of political appointees into departments and agencies. It has made ever more political appointments not only at the top of the executive bureaucracy, but also at lower ranks. Presidents have also tried to place political appointees in career positions just before leaving office, and presidents and their



appointees and the country's requirement for men and women of exceptional ability to run the executive branch appears to require a trade-off between loyalty and competence. But is such a trade-off unavoidable?

Why Is Loyalty So Important?

As the size and scope of the federal government have grown since the 1960s, so has White House distrust of the government bureaucracy, especially among Republicans. Richard Nixon told his cabinet, "We can't depend on people who believe in another philosophy of government to give us their undivided loyalty or their best work." As a result, when presidents make their political appointments, they focus less on improving management of the bureaucracy and more on gaining control over it. As Mark Huddleston observes in *The Government's Managers*, "It is a rare political appointee...who does not take up his or her office convinced that senior career officials

As the federal government has grown sin

The sheer complexity of policymaking, among other things, keeps the president and Congress from developing and defining all the requisite details of how to carry out policy. Most, sometimes all, details must be left to subordinates, usually in the executive branch.

Moreover, people attracted to work for government agencies are likely to support their policies, whether in the fields of social welfare, agriculture, or national defense. And all but a few high-level members of the civil service spend their careers within a single agency whose range of responsibilities is relatively narrow. Officials in the Education Department, for example, do not deal with the entire national budget; they deal only with the part that pertains to their programs. With each bureaucratic unit focusing on its own programs, few people in the unit view these programs from a wider, national perspective.

Outside influences also encourage parochialism among bureaucrats. Interest groups and congressional committees that support an agency expect bureaucratic support in return. Because these outsiders generally favor the policies the bureaucracy has been carrying out all along—and which they probably helped initiate—what they really want is to perpetuate the status quo.

The White House has gone to

appointees have used the Civil Service Reform Act of 1978 to reassign top-level civil servants.

Are Careerists Responsive to the President?

Is the bureaucracy as problematic as the White House believes? Certainly the ideologies of the White House and senior members of the civil service have clashed at times, although the potential for resistance to presidential initiatives has varied across agencies. Verifying that the policy predispositions of civil servants are critical to their compliance with the president's wishes is more difficult.

A few studies have found instances of bureaucratic sabotage. In his 1977 work, *A Government of Strangers*, Hugh Heclo concluded that sabotage was common, but he did not provide systematic evidence in support of this conclusion. In a more rigorous 1994 study, *Bureaucratic Dynamics*, B. Dan Wood and Richard Waterman found that the Environmental Protection Agency maintained and even increased its inspections and citations of violations of environmental regulations in the face of efforts by the Reagan administration to weaken the enforcement of environmental protection laws. Marissa Golden also found some resistance to Reagan initiatives in the Civil Rights Division of the Justice Department.

Francis Rourke, however, argues that cases of bureaucratic challenge to presidential authority have been rare and that senior bureaucrats follow the election returns and defer to the president. "What is surprising," agrees James Q. Wilson in *Bureaucracy: What Government Agencies Do and Why They Do It*, "is not that bureaucrats sometimes can defy the president but that they support his programs as much as they do. The reason is simple:...bureaucrats want to do the right thing."

Many studies of federal bureaucracies—the Equal Opportunity Employment Commission, the Federal Trade Commission, the Food and Drug

responsive. A later survey by Judith Michaels found that George Bush's political appointees relied heavily on careerists for all aspects of their jobs, from formulating policy to implementing it. Bush appointees found career civil servants helpful in everything from mastering substantive policy details and anticipating policy implementation problems to liaison with Congress and other components of the bureaucracy. In another survey, by Joel Aberbach and Bert Rockman, most of Bush's political appointees agreed that civil servants brought valuable experience to the job and had good leadership qualities and management skills. Not only did the appointees view senior civil

In sum, the bulk of the evidence is that federal bureaucrats are "principled agents." Whatever their preconceptions, political appointees usually develop trust in the career executives who work for them. There is in fact little need to make a trade-off between ability and loyalty to "control" the civil service. The bureaucrats, it turns out, are not that hard to control.

Then why do new administrations persist in the expectation of facing bureaucratic resistance? The answer seems to be that most political appointees think that their experience with careerists is somehow unique—that their careerists are different. The belief in a recalcitrant bureaucracy is so deeply

the 1960s, so has White House distrust of the bureaucracy.

Administration, the Office of Surface Mining and Reclamation, the Securities and Exchange Commission, the Nuclear Regulatory Commission, the National Highway Traffic Safety Administration, the Environmental Protection Agency, the National Labor Relations Board, the Justice Department's Antitrust Division, the Interstate Commerce Commission—have consistently found that bureaucracies change the way they implement policy in line with the president's wishes, even in areas of political controversy.

Perhaps more important, argues James Pfiffner, despite their initial suspicion and hostility, political appointees themselves usually develop trust in the career executives who work for them. Indeed, according to surveys of appointees ranging from the administration of Lyndon Johnson to the present, political appointees—regardless of party, ideology, or administration—find career executives both competent and responsive. "In interview after interview," observes Paul Light, "presidential appointees celebrate the dedication of their bureaucrats."

In a 1984 survey, large majorities of political appointees in the administrations of Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, and Ronald Reagan rated career executives both competent and

servants as working hard to carry out administration policies, they saw them as more experienced and as better managers than themselves.

The most recent data, from the Brookings Presidential Appointee Initiative, confirms that more than four out of five appointees found the career officials with whom they worked to be both responsive and competent (table 1). Only 25 percent of appointees found directing career employees to be a difficult task. Indeed, every other task about which appointees were asked was more difficult. More than a third of appointees, for example, found it hard to deal successfully with the White House.

ingrained in the conventional wisdom about how government works that it perseveres in the face of widespread contradictory experience.

Loyalty Is Not Enough

No matter how loyal appointees are to the president, they need to know what to do and how to do it once they get their jobs. The ability to manage, design, and effectively carry out new programs, implement key legislation, or deliver services should be prominent—indeed primary—criteria for choosing potential appointees.

Although there are no systematic data on how individual appointees

TABLE 1. How Reagan, Bush, and Clinton Administration Appointees View Career Civil Servants

APPOINTEES' ADMINISTRATION	PERCENTAGE OF APPOINTEES EXPRESSING VIEW	
	CAREERISTS ARE COMPETENT	CAREERISTS ARE RESPONSIVE
All	83%	81%
Reagan administration	86	87
Bush administration	85	83
Clinton administration	82	78

Source: Paul C. Light and Virginia L. Thomas, *The Merit and Reputation of an Administration: Presidential Appointees on the Appointments Process* (Presidential Appointee Initiative, 2000), pp. 9, 31, 32.

affect the performance of the federal executive branch, there is no shortage of commentary on it. Several years ago David Cohen, a former career senior executive, forcefully argued in the *Journal of Public Administration Research and Theory* that no matter what the selection criteria, political appointees themselves are often not responsive to the White House because they come with personal

major operating division a person with no experience managing funds or supervising people? What enterprise would fill every senior management position with people with little or no inside experience? Who would accept the “mindless notion that any bright and public-spirited dilettante can run a government agency”?

In an 1987 article entitled “When

core activity consistent with Reagan’s policy preferences. He found that appointees’ success in changing the behavior of an agency was related not to their loyalty to the president and commitment to his policies, but to four specific factors. One was the opportunities within the agency environment to accomplish change. The others were managerial skills and



No president is going to appoint political opponents to positions in the executive branch. The issue is not either-or but rather one of relative emphasis. Quality matters.

agendas, have multiple loyalties, and are layered upon each other. Patricia Ingraham adds that links between the White House and political appointees are frequently unclear and tenuous, providing everyone more discretion.

Even where appointees are responsive to presidential agendas, Cohen says, they tend to lack the managerial skills to enact those agendas successfully. Most appointees are lawyers, legislators, congressional staffers, academics, lobbyists, presidential campaign workers, and trusted aides to senior appointees. Some may have substantial policy expertise, but almost all are essentially individual entrepreneurs, not team players. They have little managerial experience. Many are quite young.

Thus, Cohen maintains, when it comes to selecting the top leadership of the executive branch, the White House largely abandons professional standards. The professional standards it does observe are limited to technical and program expertise. The abilities to manage, design, and effectively carry out new programs, implement key legislation, or deliver services are not prominent criteria for evaluating potential appointees. Would any large corporation, Cohen asks, place at the head of a

Worlds Collide,” Paul Light found that preparation for a presidentially appointed job, whether defined in terms of management experience, negotiating skills, congressional relations, or personal style, makes a difference. Most important, appointees’ preparation for office directly affects their ability to use the career service to an administration’s advantage. The better they were prepared for office, the more they saw the careerists with whom they worked as responsive and competent. In short, good preparation for their jobs helps political appointees mobilize the resources of the career bureaucracy. Appointees who knew what they wanted—and how to get it—viewed the career service as the most helpful in all areas, including management, substantive policy, technical analysis, and congressional relations. Thus, concludes Light, “skills are the crucial link between appointees and careerists.”

Laurence Lynn is one of the few analysts to focus on how the quality of appointees affects policy implementation. In a 1985 study of the administration of Ronald Reagan, Lynn examined five agencies, looking for lasting changes each may have made in its

experience, the appointee’s personality, and the appointee’s design for achieving his or her goals. Although the environment of an agency is outside a president’s control, appointing skilled and experienced managers with appropriate personalities and designs for achieving goals is not. Presidents should take full advantage of that opportunity.

Bring Out the Best

Although the conventional wisdom urges the president-elect to stress personal loyalty and commitment to his program in evaluating candidates for positions in the bureaucracy, the best evidence is that bureaucratic resistance to change does not pose a substantial obstacle to the president’s achieving his goals.

No president is going to appoint political opponents to positions in the executive branch. The issue is not either-or but rather one of relative emphasis. Quality matters. The greater the administrative challenge, and thus the more sophisticated the design needed to exploit it, the greater the premium on analytical ability, managerial and political skills, and personality—on those skills that bring out the best in the bureaucracy. ■

Fixing

What the Reform Commissions Saw



After the British electorate turned his party out of office in 1945, Winston Churchill's wife Clementine advised him to look upon the results as a "blessing in disguise." He replied that if she was correct, the blessing was "very much disguised." Churchill had reason for remorse. When Britain struggled, alone, to resist the advance of Hitler's forces in 1940, Churchill had summoned his nation to its "finest hour." Together with Franklin Roosevelt, who later provided assistance—first through lend-lease and after Pearl Harbor with manpower—Churchill devised the strategy that saved Western civilization as he knew it. He could hardly be blamed for indulging in a brief bout of self-pity after what he regarded as a personal repudiation on the part of an ungrateful citizenry.

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But Mrs. Churchill had it right. Defeat spared Churchill blame for the industrial strife that followed the war. It also assured that Clement Atlee, rather than he, would “preside over the dissolution of the British Empire,” something Churchill vowed never to do. It also gave him time to produce a literary classic: his six-volume history of World War II. Churchill was returned to power in 1951, beginning a dozen-year span of uninterrupted Conservative party rule. When he died in 1965, he was hailed as the savior of his nation. His magisterial funeral set a record for a non-royal, equaled only by that afforded the Duke of Wellington almost a century earlier.

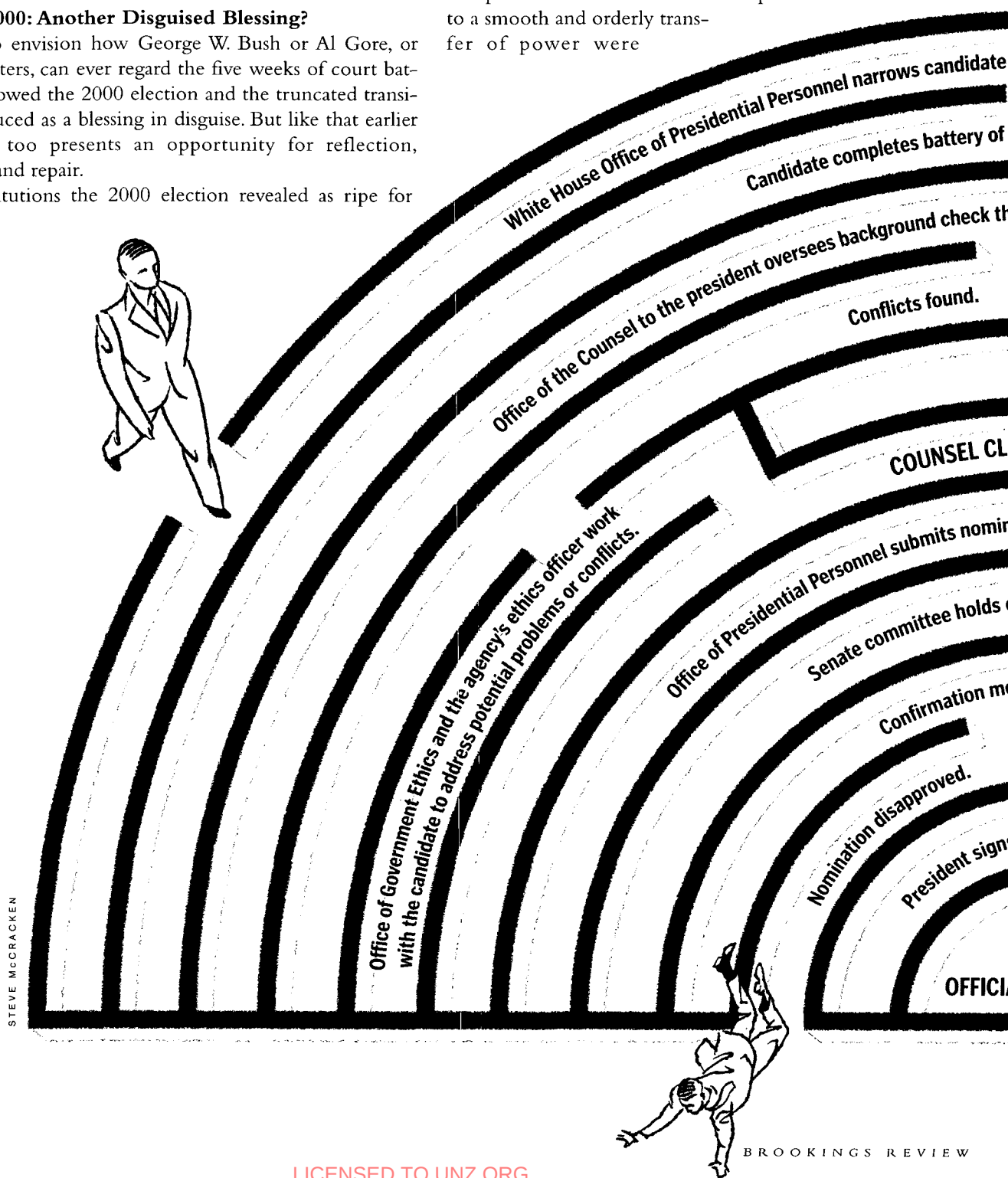
Recount 2000: Another Disguised Blessing?

It is hard to envision how George W. Bush or Al Gore, or their supporters, can ever regard the five weeks of court battles that followed the 2000 election and the truncated transition it produced as a blessing in disguise. But like that earlier instance, it too presents an opportunity for reflection, recharging, and repair.

Two institutions the 2000 election revealed as ripe for

reform were the rickety and discordant election practices common in so many American counties, with no uniform standards to resolve disputes, and the lengthy, convoluted, and unwieldy procedures by which appointees of a new administration assume positions of responsibility.

Electoral practices and devices are attracting ample attention, and the legislative hopper is filling with reform proposals. But little has been done to streamline a presidential appointment process almost universally regarded as broken. Vice President Richard Cheney, who spearheaded George W. Bush’s transition effort, stated that the greatest obstacle that post-electoral events in Florida posed to a smooth and orderly transfer of power were



delays in obtaining the necessary "clearances." Most observers of recent transitions heartily agree.

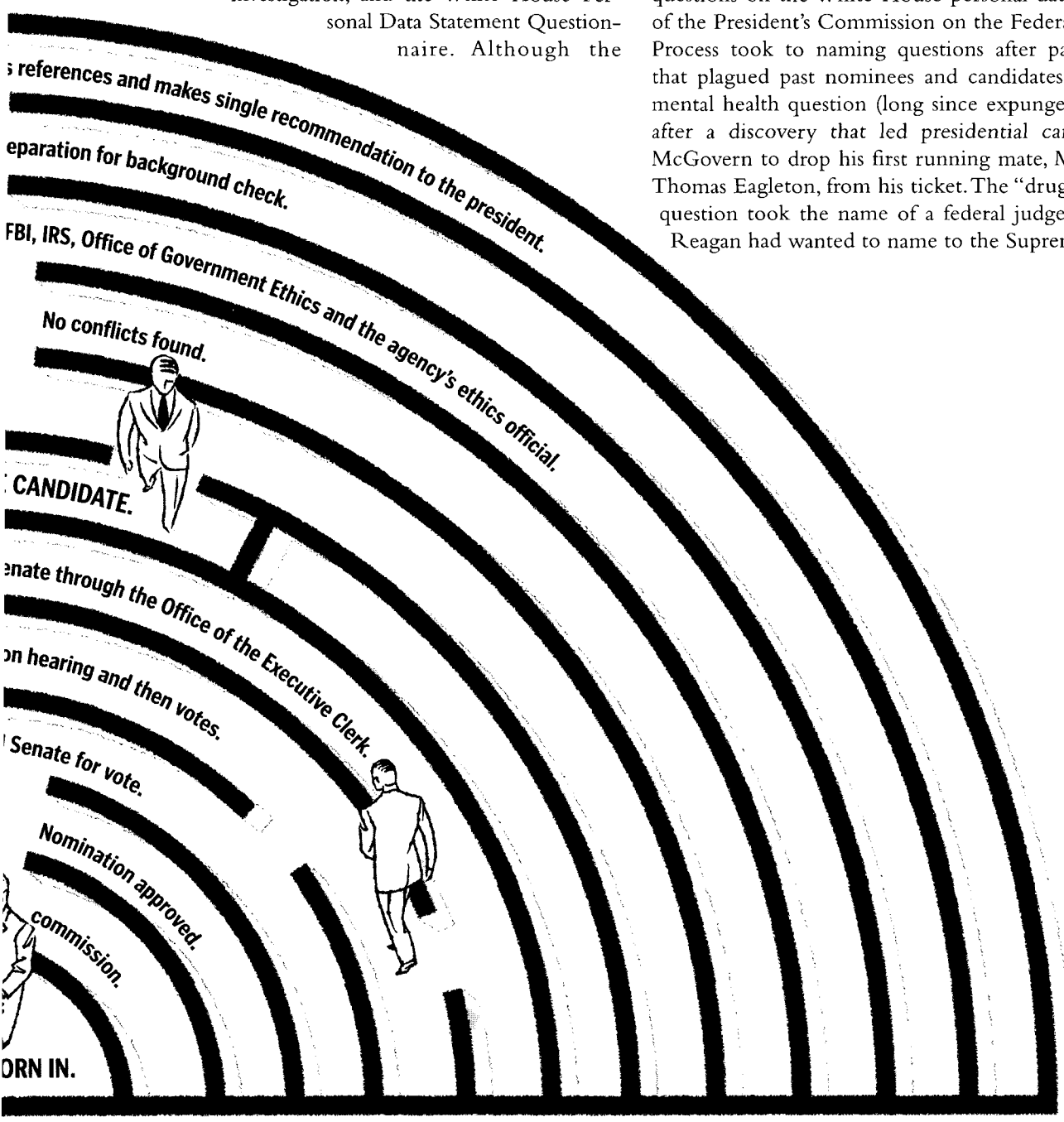
What's So Hard about a Clearance?

Background checks may seem to lay-people a simple undertaking, one that corporations, universities, credit companies, and state and local governments routinely do with great speed. But in Washington these clearances have become a torturous and lengthy trial by ordeal. The typical appointee must complete a minimum of three forms: SF-278, a financial disclosure statement; SF-86, a form that begins an FBI background investigation; and the White House Personal Data Statement Questionnaire. Although the

White House and FBI are free to modify their forms, information on the financial disclosure form is required by statute.

Nominees needing Senate confirmation must also complete forms required by the appropriate committee. Nominees who will be engaged in national security matters must complete still others. Each form comes with appropriate "waivers" granting permission for investigators to obtain medical and academic records, tax returns, and credit histories.

All the forms have lengthened over the years in response to accumulating scandals that embarrassed past nominees and administrations. In 1990, to dramatize the mushrooming of questions on the White House personal data form, the staff of the President's Commission on the Federal Appointments Process took to naming questions after past controversies that plagued past nominees and candidates. They named a mental health question (long since expunged), for example, after a discovery that led presidential candidate George McGovern to drop his first running mate, Missouri Senator Thomas Eagleton, from his ticket. The "drug use in college" question took the name of a federal judge whom Ronald Reagan had wanted to name to the Supreme Court. Prov-



ing the President's Commission's point, the Clinton administration added a question about hiring foreign nationals as domestics after withdrawing the nominations of two prospective attorneys general who had failed to pay Social Security taxes for such employees. With an eye toward protecting new administrations against similar blowups, the FBI has also extended its fields of inquiry.

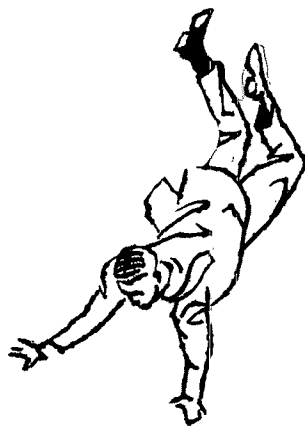
The rush of paper that sweeps through Washington during each transition has all but brought the process to a standstill. Scholars estimate that in Lyndon Johnson's day, it took about six weeks for an appointee, once nominated, to assume his or her job. By Bill Clinton's time, it was averaging more than eight months. The system now in place resembles nothing so much as the old "I Love Lucy" show in which Lucy and Ethel, working in a candy factory, are overwhelmed by the increasing speed of the conveyor belt moving chocolates in their direction.

Past Reform Efforts

All who have participated in or observed the process agree that this is a problem crying out for a solution. In the past 15 years, no fewer than six blue-ribbon commissions have suggested ways to improve the process: the National Academy of Public Administration (in 1983 and 1985), the National Commission on the Public Service (1989), the President's Commission on the Federal Appointments Process (1990), the National Academies of Sciences and Engineering and the Institute of Medicine (1992), and the Twentieth Century Fund (1996). Most of their recommendations have gone unheeded, largely through the force of inertia. Although parties to the appointment process have been sensitive to growing backlogs, duplication of effort, and wasted energies, few saw it in their immediate interest or capacity to make the needed reforms.

That may change. What post-election controversies may have done to improve election equipment and methods, the Clinton-Bush transition may do for the presidential appointment process. Americans have always been adept at applying Jonathan Swift's adage about "necessity" being the "mother of invention."

Indeed, unless improvements are made soon, more will be lost than the speed with which a new administration begins discharg-



Unless improvements are made soon, more will be lost than the speed with which a new administration begins discharging its full obligations to the American people. Delays in placing people in their posts impede the president's ability to direct the workings of the government.

ing its full obligations to the American people. Delays in placing people in their posts impede the president's ability to direct the workings of the government. "Holdovers" from the past administration may be unsympathetic to his goals, and civil servants may be unable to anticipate his policy preferences and unwilling to take bold action in the absence of political leadership.

An excessively slow appointment process also prevents the public from holding public officials to account through duly elected representatives. That is best achieved by having top-level, presidentially selected officials in place early to testify before Congress and present the administration's case through the media.

Extensive background checks and confusing and contradictory forms that are more obstacle than invitation to service may discourage the most able people from joining an administration. Even under the best of circumstances, potential candidates for high-level policy positions may find their salaries cut, their careers interrupted, and their privacy lost. To that list might be added "exit restrictions" that can limit their future earnings, as well as the potential harm of politically inspired "leaks" and rumors during the nomination and confirmation processes.

Just How Good Are Those Blue-Ribbon Recommendations?

The new administration and Congress will not need to name another commission or hold lengthy hearings to decide how to proceed. The problem has been studied extensively. Although the recommendations vary as to their practicability, findings of the half-dozen bodies that have studied the appointment process over the past two decades cluster around seven major ideas.

First, start transition planning early. Traditionally, presidential candidates have eschewed talking about plans for a possible transition, lest they appear presumptuous. Ronald Reagan was an exception, and scholars attribute much of his success to his early planning. In 2000, candidates George W. Bush and Al Gore, following in the Reagan mold, placed trusted advisers in charge of planning their transition. The impact of those efforts was clouded, of course, by the unprecedented delay in determining the winner of the election.

Second, assist new nominees. All the studies speak to the "isolation" nominees endure while awaiting appointment or confirma-

tion. They recommend that a new White House Office of Presidential Personnel or inter-agency committee guide candidates through the process and advise them periodically where they stand. Another common suggestion is that either the Office of Management and Budget or the executive clerk to the president maintain job descriptions for every position the president is free to fill. These suggestions are sound and can easily be implemented.

Third, decide which positions merit a “full-field” FBI investigation. The Twentieth Century Fund panel found the full-field investigation, standard practice since 1953, “too blunt and intrusive an instrument for the purposes for which it is currently used.” Its study and several others questioned whether certain appointed positions required an FBI investigation. Mindful of its professional role, the agency prefers to “treat all comers the same.” But it is not the FBI’s responsibility to decide which nominees to investigate or exempt. Present coverage can be streamlined either statutorily or by executive order.

Reports issued by the President’s Commission on the Federal Appointments Process and the scientific communities recommended limiting investigations of nominees to the time since they last departed government service. The President’s Commission suggested leaving the matter to the discretion of the agency where the appointee would serve.

Recent “leaks” of raw data from FBI files and misuse of files by either White House or congressional personnel underscore the need to enforce existing statutes and to enact others to protect the privacy of citizens. Information available to those who review a nominee’s suitability should also be made available to the nominee before his or her fate is decided.

Fourth, clarify conflict-of-interest restrictions. This may be another area crying out for statutory change. Commonsense practices, subject to peer review, should replace “straitjacketing” restrictions that now determine conflicts of interest and set exit requirements. Requirements that nominees divest themselves of holdings in industries over which they have jurisdiction should be modified to allow them to spread capital gains taxes over several years or otherwise avoid forced “losses.” Rules regarding blind trusts could be clarified.

Fifth, allow cabinet officers to do the hiring in their departments. Although several commissions urged this measure both to enhance the efficiency of government and to relieve the president and his staff of the need to pass upon people with whom their interaction will be slight, the recommendation flies in the face of recent history. Presidents who delegated this task exclusively to the cabinet (Nixon and Carter) found that appointees were more likely to pursue interests other than and often contrary to the president’s. Those who exerted a firm hand over hiring decisions (Reagan and Clinton) put together administrations that worked better as a team.

Sixth, make fewer political appointments. This has become all but gospel in most of the foundation-supported, “good government” commissions on the appointment process. Noting the burden on the president of filling numerous positions, they see having fewer political appointees as a way to increase efficiency, especially during transitions.

Overlooking the practical obstacles to these proposals—why would any president want to give up this hefty instrument for asserting control over the executive branch?—such recommendations do not consider the costs such “reforms” would entail. Surely fewer than 6,000 people in a government workforce of 1.7 million is hardly a sign of the “politicization” of the government. That relative handful of appointees is one primary means presidents have of assuring that their directives are carried out. The more committed they are to the president’s goals, the more energy they are likely to invest in furthering them.

It is through political appointees, who set policy, rather than through career civil servants, who execute it, that Congress, the media, and the public hold administrations accountable. Success in this arena may require skills more readily acquired in the political arena or outside government entirely. Appointees who are not effective can be easily dismissed.

Seventh, establish limits on senatorial “holds” and make fewer positions subject to Senate approval. Senators value their prerogatives highly. Often they use holds to extract concessions from the administration or influence the direction an agency is to take. This is a scepter they are unlikely to give up. And, given its committee structure, the Senate can hardly be expected to agree on which posts to exempt from the reach of its advise and consent authority.

A more promising route would be for the new president to request the Senate’s leaders to supply the White House with its forms so that all required paperwork can go to nominees at the same time. This simple measure can save nominees days, if not months, of paperwork and fees spent on lawyers and accountants. The president may be able to persuade the Senate to adopt a common form, with each committee free to request additional information as an attachment. Perhaps the Senate can even be persuaded to follow the White House form.

An Undisguised Blessing

Anything the new president and Congress do to assist new nominees, clarify conflict-of-interest rulings, reduce the tax liabilities and exit requirements placed on new nominees, establish order, logic, and priorities to FBI and other “clearance” processes, and bring the Senate’s demands and requirements into closer conformity with the White House’s will go a long way to streamline what has become an excessively burdensome and antiquated process. All can be achieved without intruding upon the prerogatives of either the president or the Senate to discharge their constitutional obligations.

Practical measures such as these will improve both the functioning of American democracy and the quality of public service not only for the Bush administration, but for all administrations to come. That would constitute an important part of President Bush’s legacy—and that of the 107th Congress. If such remedies are successfully undertaken, historians of the future may proclaim them the “blessing in disguise” that flowed from the aftermath of the 2000 election. ■

Fabulous Formless Darkness

Presidential Nominees and the Morass of Inquiry

by Terry Sullivan

The White House wants to know what real estate you or your spouse now own. It also wants a list of properties you and your spouse have owned in the past six years but don't now. ■ The FBI wants to know about properties in which you have an interest. Presumably the properties you might have an interest in include more than those you own outright. Drop the spouse and drop the past six years. ■ The U.S. Office of Government Ethics wants you to report real properties that you have sold or bought. It also wants you to list real estate assets currently held, as well as any you have sold that made you at least \$200. Drop the past six years, but add the past two. Skip the properties you own but have not bought recently. Add your spouse to the mix. Add any dependent children. Then set the values of the transactions within one of eleven ranges. ■ A Senate committee wants to return to the White House question of ownership, drop the spouse, drop the dependent children, take the FBI time frame, drop the past six years, then drop the two years, forget about sales and acquisitions, drop the value ranges. But add a specific value to each of the properties reported.

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Though W. B. Yeats had in mind the primordial chaos of mythology when he penned my title phrase, the Irish poet could well have been speaking of the inquisition that U.S. presidential appointees face in securing a post in the federal government. Over the past 30 years, the process by which the president's nominees are confirmed has become an increasingly murky fen of executive branch and Senate forms, strategic entanglements, and "gotcha politics." According to the 1996 Task Force on Presidential Appointments assembled by the Twentieth Century Fund, the appointment process has

called for finding ways to diminish the blizzard of form filings.

This article explores what such efforts might entail. It describes the different inquiries, identifying the general areas of scrutiny, specific questions and their variants, and the array of relationships between these questions. It demonstrates the degree of commonality in areas of scrutiny and across forms. And it assesses three potential approaches to reform, concluding that two strategies seem most effective.

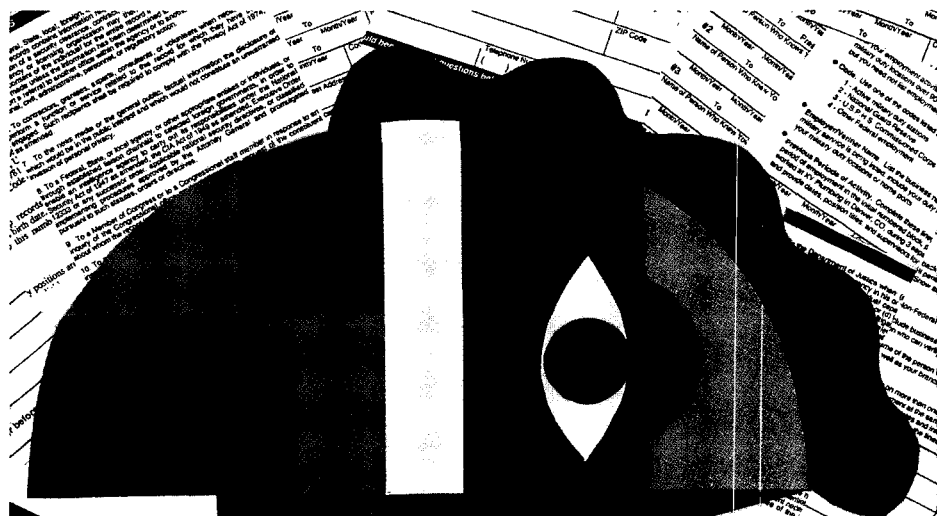
The Formless Darkness

Anyone nominated for a position requiring Senate confirmation must file four separate forms. The first, the Personal Data Statement (PDS), originates in the White House and covers some 43

report for all federal employees above the rank of GS-15. For most nominees, the third additional form comes from the Senate committee with jurisdiction over the nomination. Having returned each of these four forms, some nominees will receive a fifth questionnaire, again from the Senate committee of jurisdiction, with more specific questions about the nominee's agency or policies it implements.

While nominees complain about several aspects of the process, they regularly and uniformly express frustration with the repetitive and duplicative questions. Indeed, nominees leave the impression that the forms contain nothing but repetitive inquiries. Although the problem is not that severe, the degree of repetitiveness does represent

Over the past 30 years, the process by which the president's nominees are confirmed has become an increasingly murky fen of executive branch and Senate forms, strategic entanglements, and "gotcha politics."



discouraged and demoralized many who would work in a presidential administration. A recent survey of former appointees from the past three administrations released by the Presidential Appointee Initiative elicited such descriptions of the process as "embarrassing," "confusing," and "a necessary evil." The PAI study concluded that "the Founders' model of presidential service is near the breaking point. Not only is the path into presidential service getting longer and more tortuous, it leads to ever more stressful jobs. Those who survive the appointment process often enter office frustrated and fatigued." Both the Twentieth Century Fund's task force and the Presidential Appointee Initiative report

questions laid out in paragraphs of text. Applicants permitted by the White House to go on to the vetting stage fill out three other forms. The first, the Standard Form (SF) 86, develops information for a national security clearance investigation, commonly called the "FBI background check." The SF-86 has two parts: the standard questionnaire and a "supplemental questionnaire" that repackages some questions from the SF-86 into broader language often similar though not identical to questions asked on the White House PDS.

The second additional questionnaire, SF-278, comes from the U.S. Office of Government Ethics (OGE) and gathers information for financial disclosure. It doubles as an annual financial disclosure

an undue burden. As indicated at the outset, for example, a presidential nominee is obliged to muster information on real estate property on four forms involving three separate time periods, three separate classes of owners, and at least two separate types of transactions—providing essentially the same information four times, but sorted each time in a different way.

Measuring Repetitiveness

Just how repetitive are the forms? This section tackles that question, first identifying the different levels of repetitiveness and then assessing the distribution of repetitiveness over the different categories of inquiry pursued in the questionnaires.

Table 1. How Repetitive Are the Questions?

TOPIC	NONREPETITIVE QUESTIONS	REPETITIVE QUESTIONS	TOTAL QUESTIONS	PERCENT REPETITIVE
Personal & family background	39	22	61	36
Professional & educational background	22	39	61	64
Tax & financial information	11	21	32	66
Domestic help issue	1	0	1	—
Public & organizational activities	2	7	9	78
Legal & administrative proceedings	10	25	35	71
Miscellaneous	31	3	34	9
Totals	116	117	233	Avg. 50

Source: White House Personal Data Statement, Standard Form 86, Standard Form 278, and a representative Senate committee questionnaire.

The questions fall into three repetitiveness categories based on how much common information they require. Identical questions (for example, “last name”) inquire into the same subject without varying the information elicited. Repetitive questions (for example, the real property questions) request information on the same subject but vary it along at least one dimension. And nonrepetitive questions (for example, the “nanny-tax” question asked only on the White House PDS) seek different information.

On the four forms mentioned (one a representative Senate committee questionnaire), nominees must respond to 233 questions. They must answer 116 nonrepetitive questions (those without an analog) and 99 repetitive questions (those with analogs). They regularly repeat the answers to 18 identical questions. Thus half of the questions nominees answer have some analogs elsewhere while slightly less than half have no analogs anywhere.

Table 1 shows how questions are distributed across the seven topics used in the White House Personal Data Statement—personal and family information, profession and education, taxes and finances, domestic help, organizational activities, legal and administrative activities, and miscellaneous. More than a third of the questions cover personal and

family background. This large share derives primarily from the detailed background information required on the SF-86. Most of the remaining questions focus on professional and educational achievement or—much emphasized by the PDS and the FBI background check—legal entanglements.

Table 1 also reports the degree to which a category includes repetitive questions. One potentially misleading result, however, should be noted. Although the personal and family background category has a repetitiveness rate of 36 percent, it is not as burdensome on nominees as might appear, primarily because it contains almost all the identical questions (15 of the 18 asked) found across the four forms and those questions tend to focus on basic information such as name and telephone number. This category also accounts for the largest number of separate questions (39). One prescription for reducing repetitiveness in this category, then, could simply be to reduce the contact information required of nominees.

The greatest repetitive burden occurs on three topics: professional and educational background (64 percent over 61 questions), tax and financial information (66 percent over 32 questions), and legal and administrative proceedings (71 percent over 35 questions). Association

with employers and potential conflicts of interest constitute a classic example of repetitiveness. Everyone involved in vetting nominees wants to know about potential conflicts of interest embedded in the nominee’s professional relationships. Patterns of repetitiveness in reporting conflicts of interest resemble those found in reporting property: multiple reporting periods, multiple subjects, and multiple types of information. Real property, of course, is a classic example of the kinds of repetitiveness found under the rubric of tax and financial information.

The level of repetitiveness under the rubric of legal and administrative proceedings seems particularly telling because, as noted, the Office of Government Ethics asks no questions about legal entanglements. The repetitiveness results almost exclusively from the FBI’s tendency to turn a single general question from the PDS into multiple specialized variations. For example, while the White House asks about arrests, charges, convictions, and litigation all in one question, the FBI asks a series of questions covering separate classes of offenses and case dispositions: felonies, firearms, pending charges on felonies, courts martial, civil investigations, agency procedures, and so on. The FBI background check also changes the time period from that used on the PDS.

Table 2. How Repetitive Are the Questions after Reform?

TOPIC	NONREPETITIVE QUESTIONS AFTER REFORM	REPETITIVE QUESTIONS AFTER REFORM	TOTAL QUESTIONS AFTER REFORM	PERCENT REPETITIVE AFTER REFORM	PERCENT REPETITIVE BEFORE REFORM
Personal & family background	39	19	58	33	36
Professional & educational background	22	11	33	33	64
Tax & financial information	11	6	17	35	66
Domestic help issue	1	0	1	—	—
Public & organizational activities	2	7	9	78	78
Legal & administrative proceedings	10	7	17	41	71
Miscellaneous	31	3	34	9	9
Totals	116	53	169	Avg. 31	Avg. 50

Source: White House Personal Data Statement, Standard Form 86, Standard Form 278, and a representative Senate committee questionnaire.

Strategies for Rescuing Nominees

The informational burden on nominees can be eased by reform in three directions—by narrowing the scope of inquiry, by cutting redundancy, and by reconsidering strategic institutional imperatives.

Ask Fewer Questions

Reducing the scope of inquiry would be most straightforward. Because fewer than half of all questions asked of nominees are repetitive, reform could properly focus on reducing the number of unique questions. Yet of the 116 questions having no counterpart elsewhere, exactly half (58) are on the FBI background check; more than half of those (37), or a third of the total, involve personal and family background. They establish a host of background characteristics presumably necessary to trace an individual's identity, including basic descriptors like "height" and "hair color" and spouse citizenship. The only questions that might seem superfluous require information on the nominee's previous marriages and descriptions of adults who reside with the nominee but are not part of the immediate family. It does not seem likely that trying to ask fewer questions will reduce the burden on nominees, except where authorities are willing to challenge the basic tech-

niques used in carrying out a background investigation.

One possible reform in this area would be to transfer basic background information on a nominee before the FBI conducts its investigation. The administration would request a name search on the nominee from the government's files, transfer the results to the appropriate forms, then hand the forms to the nominee to check, amend, and complete. At that point the background check would begin in earnest. This approach would not only reduce the burden on nominees but also reduce the time the FBI spends retracing its earlier investigatory steps.

Reduce Repetitiveness

Reform could also accommodate nominees by reducing repetitiveness, as shown in table 2. Taking this approach increases the number of identical questions by smoothing the questions asked across forms, and it may involve changing congressional mandates. Among the repeated questions, three-quarters require nominees to reshape answers to previous questions. The real property questions described earlier are a perfect example. Nominees must answer six separate though similar questions. Settling on a single question—using the OGE approach, for example—instead of on

six, would cut the percentage of repetitiveness in the tax and financial category by 47 percent, from 66 percent to 35 percent, while cutting the number of questions in this category almost in half.

To create one common question, the four institutions could rely on the broadest range of information required on any dimension involved in a topic. For example, on the real property example, all institutions could settle on the longer time periods of the White House, the broader definition of subjects used by the FBI, and the broader notion of ownership inherent in the FBI's term "interest." In the end, this reform reduces the burden on nominees by affording them a standard format in which to provide information.

Rethinking questions about professional relationships could also help. At least ten separate questions involve connections between the nominee and corporations and other institutions. Like the questions on property, they vary by time period, the type of organizations involved, the level of connection to the organization necessary to report, the level of compensation triggering a report, and so forth. Reform here could reduce the number of questions on conflict of interest from ten to, say, three. Other changes could cut the number of questions about education, plans for

post-government compensation, and foreign representation. Consolidation in these three groups could reduce eight questions to three. In all, reformulation could decrease repetitiveness in this area by half—from 64 percent to 33 percent.

Under the last topic with serious repetitiveness, legal and administrative proceedings, reformulation could eliminate all but seven questions, reducing repetitiveness from 71 percent to 41 percent. Overall, reformulating these questions would reduce repetitiveness in the executive branch forms from almost half of all questions to less than one-third—a very substantial improvement of 38 percent.

The difficulty of this approach is that the questions generated by both the FBI in SF-86 and the OGE in SF-278 have substantial institutional justification. In the former, the FBI can rely on exper-

Because it initiates the process, it can afford to limit its own information requirements by securing the information delivered to the other agencies. Instead of offering its own form, the White House could rely on the fact that it can see how applicants fill out their SF-86 and draft their SF-278 as part of the initial negotiations that identify eventual nominees. Based on those drafts, the White House would then decide whether to carry through its intent to nominate, thereby triggering the appointment vetting process. Because almost all the PDS questions are repeated on other forms, this strategy would reduce repetitiveness to around 28 percent, slightly less than the more complicated strategy outlined earlier.

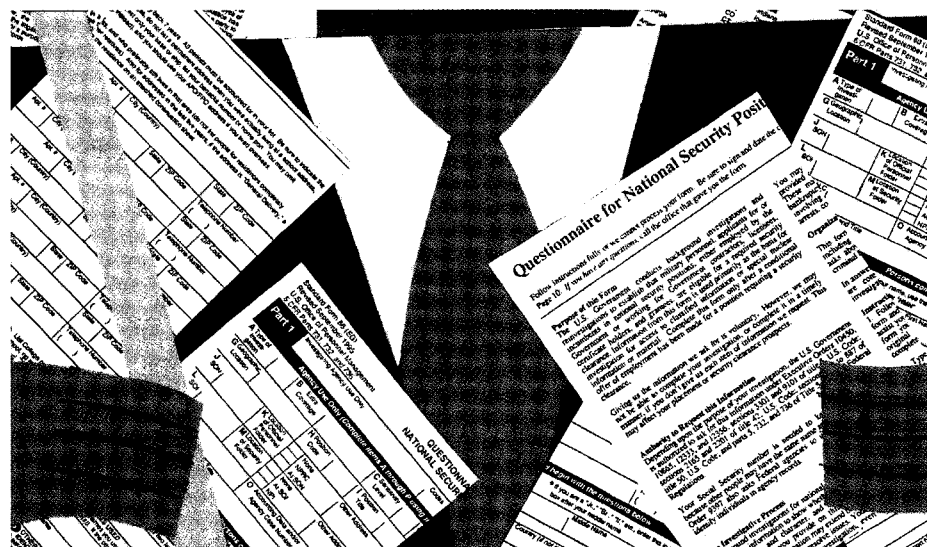
For its own deliberations, the White House would not lose any relevant information. Except for the “nanny

For example, committee questionnaires regularly require nominees to commit to reporting to the Senate on policy decisions that vary from legislative policy. No amount of reform will likely reduce the interest of the Senate in committing nominees to follow committee dictates on policy differences.

Second, many Senate committees require more detailed financial information than the executive branch questionnaires, in the form of “net worth” statements. The issue here has become the necessity of requiring information about net worth when it does not clearly indicate the kinds of relationships typically understood to create conflicts of interest.

The Relative Ease of Reform

Extracting nominees from the formless darkness of the appointment question-



The informational burden on nominees can be eased by reform in three directions—by narrowing the scope of inquiry, by cutting redundancy, and by reconsidering strategic institutional imperatives.

tise about the nature of the investigative process to suggest that it must generate sufficient data to discover security risks. In the latter, the SF-278 has a substantial statutory basis for its inquiries. Changing the form requires changing the statute.

Reconsidering Institutional Imperatives

A final reform strategy would be for one of the four institutions to surrender control over information and rely instead on information already gathered by others. The White House has the best opportunity to take this approach.

question,” the PDS provides information secured on other forms. Because the PDS does not provide information on any “decision criteria” unique to White House concerns, eliminating it would not adversely affect White House considerations.

The Senate Forms

Except for a few questions requiring the nominee to list publications and honors, Senate committee questionnaires differ from executive branch forms in two important respects. First, they attempt to commit nominees to resolving “constitutional” conflicts in the Senate’s favor.

naires requires only a few simple changes in the requirements imposed on them for information. As noted, streamlining information across forms, taking the highest and broadest levels of variation as the focus, greatly reduces repetitiveness without severely curtailing the information made available. Without even attempting to assess either what information is necessary to select the president’s team or whether decision criteria are appropriate, the government can make big improvements and thereby begin to reverse the unwholesome atmosphere for potential appointees. ■

First Impressions

A Look Back
at Five
Presidential
Transitions

by Stephen Hess

In most of the world's democracies, the pieces of a newly elected government are already in place in the form of a shadow cabinet whose members have been serving as the government's loyal opposition. When a new leader takes office, members of the new cabinet are immediately available. In the United States, however, a newly elected president must quickly put together his government, choosing hundreds of private citizens to serve in his administration.

The new president's first challenge, between election day and inauguration day, is to select some 30 people to serve in his cabinet and as his top White House staff. The cabinet includes the secretaries of the 14 executive departments plus an assortment of other top echelon jobs, such as the U.S. trade representative. The key White House staff includes the chief of staff, the national security adviser, counsel, press secretary, and the top economic and domestic policy aides.

For those on the inside of the selection process, noted Martin Anderson in *Revolution: The Reagan Legacy*, the transition is

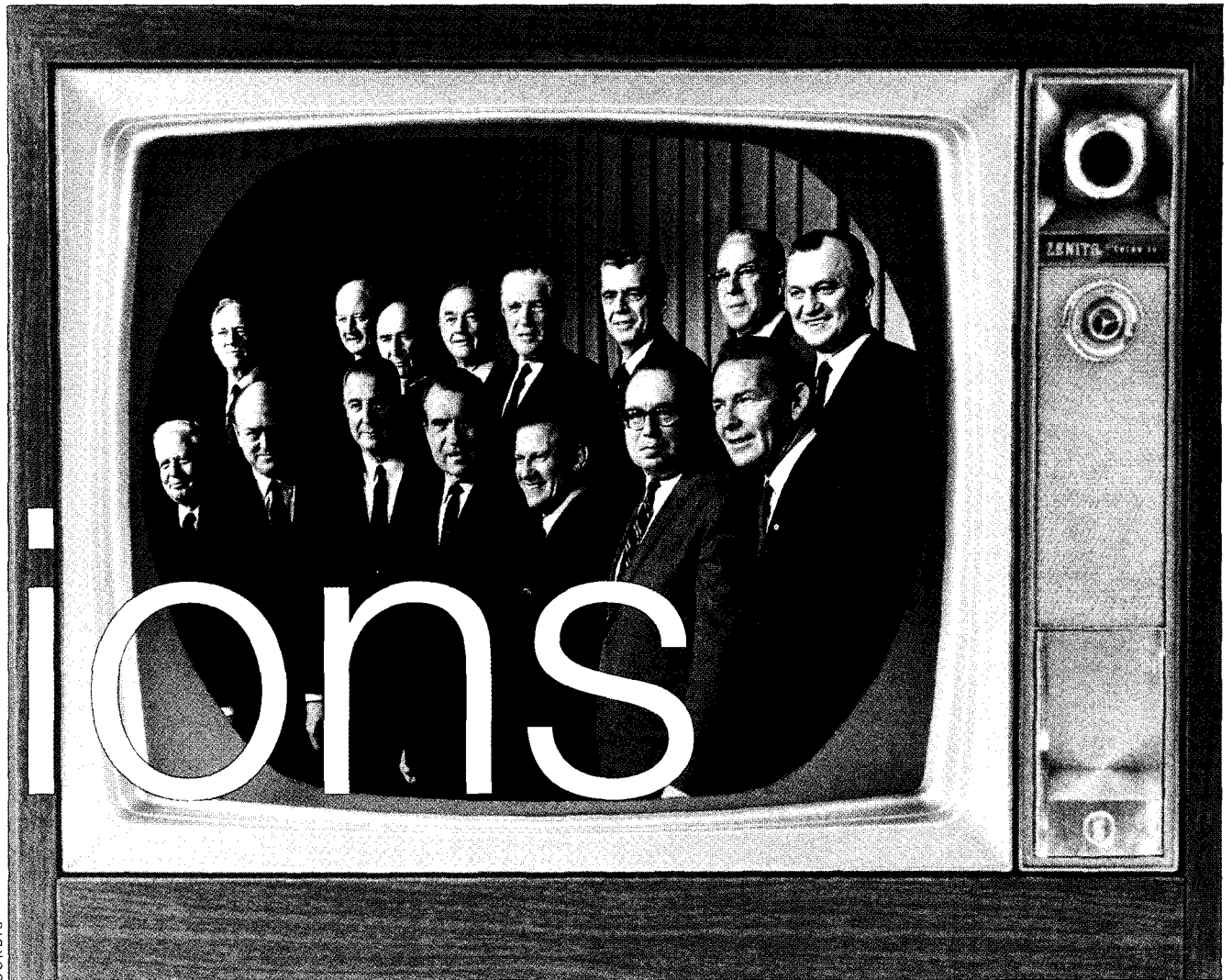
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a time of "delicious chaos." For those on the outside, including the press, bankable information is hard to come by. It is a complicated business, largely conducted behind closed doors. Yet the selection of these 30 individuals determines, in large measure, the initial success and lingering impression of each presidency. An orderly transition shows Americans a presidency predisposed for success. But personnel mistakes, sometimes serious errors, can and have plagued chief executives even before they took office.

A quick survey of the highlights—and lowlights—of five recent first-term transitions provides a roadmap to successful transitions.

RICHARD NIXON Elected November 5, 1968

Richard Nixon's transition was one of the smoothest in recent memory. By the end of the second week after his closely fought campaign against Hubert Humphrey, Nixon had appointed his White House congressional liaison (Bryce Harlowe), chief of staff (Bob Haldeman), counsel (John Ehrlichman), and press secretary (Ronald Ziegler). Two weeks later he



had picked his top national security, economic, and science advisers. On December 11 he introduced all 12 departmental secretaries—all white males—on live, prime-time TV. The extravaganza made the expected splash and grabbed attention, but in hindsight its real value was to reduce the nitpicking attention given each nominee. It was as if to say, noted Tom Wicker, “Let’s have a big hand for the new Government.”

Senate committees held informal hearings on the president-elect’s cabinet choices quickly. On January 20, Nixon took the oath of office and sent his cabinet nominations to the Senate, where, except for Alaska governor Walter Hickel, his choice as secretary of the interior, they were approved during a 20-minute session. The next day they were sworn in. And after Hickel expressed to the Senate a devotion to environmental conservation that had not been previously evident, he too was approved and sworn in on January 23. The *Washington Post*’s Herblock, whose drawings of Nixon consistently featured dark jowls, now drew a barbershop with a sign, “THIS SHOP GIVES EVERY NEW PRESIDENT OF THE UNITED STATES A FREE SHAVE.” In general, it was that sort of transition.

JIMMY CARTER

Elected November 2, 1976

Trying to avoid the type of bunker mentality that had eventually characterized the Nixon presidency, Jimmy Carter conspicuously chose his cabinet before announcing his White House staff (excepting press secretary Jody Powell). Because the president-elect, a stranger to Washington, was not widely acquainted with the typical denizens of a cabinet, he invented a selection process of elaborate interviewing. That allowed him to get to know the candidates, but also invited intense lobbying of the kind Nixon had eluded with his TV show. Operating from hotel-less, motel-less Plains, Georgia, did not make the search any easier.

Five weeks after the election Carter announced his first two cabinet choices—Cyrus Vance as secretary of state and Bert Lance to head the Office of Management and Budget. Two weeks later he had rounded out a cluster of national security posts with Harold Brown (Defense) and Zbigniew Brzezinski (National Security) and an economic cluster with Michael Blumenthal (Treasury) and Charles Schultze (Council of Economic Advisers). All but Lance were experienced

Washington hands; all, white males. On December 16 Carter announced Congressman Andrew Young, a long-time friend, as his choice for United Nations ambassador. By December 23, Carter had completed his cabinet selections, including two women—Juanita Kreps at Commerce and Patricia Harris, a black, at Housing and Urban Development. Senate hearings generated some heated controversy, especially over Griffin Bell (attorney general) and Ted Sorenson (CIA). In the end, Sorenson asked that his name be withdrawn. Finally, a week before the inauguration Carter named a Georgia-dominated White House staff, emphatically “open door” and “free access” in nature. Whatever the Carter administration was going to be, it did not want to be the Nixon administration.

RONALD REAGAN

Elected November 4, 1980

Reagan’s transition team prepared well and early, taking advantage of a landslide election victory and also of the readiness of experienced Washington hands to join his new administration after only a four-year GOP hiatus—not to mention a cadre of veterans of California’s state government. Led by Reagan’s chief of staff in Sacramento, Ed Meese, the transition

administrations. This presidency, it appeared, was prepared to “hit the ground running.”

GEORGE BUSH

Elected November 8, 1988

George Bush, the man with the golden resumé—congressman, ambassador to the UN and to China, national party chairman, CIA director, two-term vice president—would not assemble a government of strangers. Said one old friend, “Loyalty is his ideology.” But the “friendly takeover” from Reagan to Bush was surprisingly rocky. Although Bush retained numerous Reagan appointees (of 53 White House staffers, 27 came from the Reagan government), everyone knew somebody who had gotten a pink slip.

Bush got off to a fast start, announcing the morning after the election that he would appoint James Baker as secretary of state and several days later that he would retain three other Reagan cabinet members—Nicholas Brady (Treasury), Richard Thornburgh (attorney general), and Lauro Cavazos (Education). In the end he selected two Hispanic Americans, one African American, and two women—a considerable advance in diversity over previous Republican cabinets.



team filtered nominees through a “kitchen cabinet” of Reagan’s California friends, including his personal lawyer, William French Smith. Although some appointments mattered deeply to Reagan, he left many choices almost entirely to others. By the end of the seventh week, almost all appointments had been announced. On December 22, Reagan added the lone black (Samuel Pierce, Housing and Urban Development) and the lone woman (Jeane Kirkpatrick, United Nations) to his cabinet. In the end, ironically, there were more strangers—people the president had scarcely even met—in Reagan’s cabinet than in Carter’s. Although all Reagan’s nominees were approved by the Senate with ease, several, including Al Haig (State), William French Smith (Justice), James Edwards (Energy), and James Watt (Interior), had contentious hearings.

Reagan’s White House staff was not—as Ed Meese had accurately predicted—“nine guys from California.” Indeed, what most distinguished his aides was their collective experience in the executive branch. Chief of staff James Baker, for example, had first come to Washington to be under secretary of commerce in the Ford administration. Other top assistants had also served Washington apprenticeships in previous GOP

The conundrum of the Bush transition was why a team so knowledgeable in the culture of the capital had such severe startup problems. Dr. Louis Sullivan, nominated to be secretary of health and human services, found himself embroiled in—and entirely unprepared for—a bitter abortion controversy. In the end, he won a 98–1 confirmation vote on March 1. But if the matter of Sullivan was an embarrassment, the matter of John Tower was a disaster. Tower,

nominated as defense secretary, was no innocent traveler in the Washington wilderness. Indeed, he had chaired the Senate Armed Services Committee that held hearings on his nomination. But when the hearings began in January, Tower was subjected to an almost daily barrage of allegations about drinking and womanizing, as well as about his defense industry connections. The committee voted 11–9 against Tower, and the full Senate narrowly rejected his confirmation. Bush quickly patched up relations with Congress by appointing Dick Cheney, the popular Wyoming congressman who had been President Ford’s chief of staff. But he paid a heavy price for the Tower humiliation. Three other cabinet nominees—James Watkins (Energy), William Bennett (drug czar), and Edward Derwinski (Veterans Affairs)—were not confirmed until March. The *New York Times* reported “a growing impression in Washington” that the administration was “adrift.”

BILL CLINTON

Elected November 3, 1992

If the Bush transition was uneasy, the Clinton transition was downright chaotic. On the plus side, Clinton’s earliest nomi-

nations—Lloyd Bentsen (Treasury), Roger Altman (deputy at Treasury), Leon Panetta (Office of Management and Budget), Alice Rivlin (deputy at OMB), and Robert Rubin (National Economic Council)—illustrated his priority on economics. Much of Clinton's transition problem was his self-imposed task of creating a cabinet that "looks like America," reserving the attorney general slot for a woman. But by Christmas Eve, the mythic date by which presidents-elect aim to complete their cabinets, he had not yet announced his choice for chief law enforcement officer and hurriedly chose Zoë Baird. When it was revealed that Baird and her husband had hired illegal aliens to care for their child and additionally had not paid their employees' Social Security taxes, the confirmation hearing was brutal. Baird's nomination was withdrawn, to be replaced by Kimba Wood, who also had a "nanny problem." On the third try, Clinton chose Janet Reno, state attorney for Dade County, Florida. When Reno was confirmed, on March 11, Clinton's cabinet had eleven men and four women, nine whites, four blacks, and two Hispanic Americans. Yet the fallout from the attorney general fiasco helped create the impression that the new presidency would, as the *New York Times* put it, "hit the ground stumbling."

Lessons

If we could gather in one room the five presidents whose transitions we have just explored and ask them what advice they could give the next president, this is what I think they would say.

First, be prepared, even before you are elected. There are risks to planning personnel decisions before election day, but emerging from an election with a carefully vetted list of those who should be considered for top jobs is of inestimable value.

Second, act quickly. The normally sound counsel—"Take your time and get it right"—is bad political advice. Most bad transition decisions are those that take the longest, those made as the transition clock is running down. The longer you delay, the greater pressure you will be subjected to. Every prompt decision means you will have to say "no" a lot fewer times. Quick decisions mean that the transition news will be momentum, not indecisiveness. A handy rule of thumb: have your White House staff in place by Thanksgiving and your cabinet secretaries announced by Christmas (assuming your election is not contested).

Third, put the White House first. By election day you probably do not know who you want to head the departments of Agriculture, Commerce, or Labor. But you do know who you want as your top White House aides. So why delay the announcements?

Fourth, think clusters. For one shining moment at the administration's creation, you have the opportunity to relate the parts to each other. If you choose a secretary of state, a secretary of defense, and a national security adviser who are in sync, whose egos and ambitions are properly aligned, you will have a better shot at achieving your objectives.

Fifth, send a message. Appointments, so microscopically examined and interpreted by the media, can be used by presi-

dents-elect to make a statement. Clinton picked an economic team, signaling thereby his top priority. Most presidents in transition simply announce their intentions as they make up their minds and thus fail to take advantage of these early opportunities.

Sixth, choose your demographic goals. Deep in the archive of your mind should be a rough sketch of what you want and need your administration to look like. This is personal property. To announce that you want the attorney general to be a woman is to paint yourself into a corner. Remember that this is a game that you can win by changing the dimensions of the playing field. The U.S. government has 14 departments, but some government agencies or even offices are more important than some departments. Announce which positions are in your cabinet before you make the appointments so that the appointments will not be denigrated as pandering to special interests.

Seventh, feed the beast. As Lloyd Bentsen's press secretary noted, given "a constant supply of doggie biscuits," the news media will "gleefully lick the hand that feeds them." But run out of treats, and they will "devour your arm." The problem can be particularly severe for a transition press secretary who has nothing to report while the boss juggles the makeup of the cabinet. The lesson here is that having a press corps on hand and no hard news is an opportunity for the incoming administration to educate the journalists through daily briefings by visiting experts on all matters that they expect to confront in the next four years.

Finally, tell your nominees to smile and grovel. After the nominations have been made and sent to the Senate, the new president confronts a lot of brush fires and, it seems, at least one truly horrendous confirmation. Nominees must be prepared to endure being confronted by growl and swagger—no easy task for people who also think they are important. To which the best advice of the political sherpas most experienced at leading nominees through the confirmation process is to accept the short-term pain. And handle senators with care. Once senators get the respect they think they deserve, they give the president pretty much what he asks for.

Now What?

And so the team is in place: president, White House staff, cabinet. The last act of the transition is for someone to quote the favorite line of all political junkies: from the 1972 movie, a dazed Robert Redford, the winning candidate, suddenly realizes that now he must actually govern. "What do we do now?" ■

The selection of the cabinet and top White House staff determines, in large measure, the initial success and lingering impression of each presidency.

The Senate and Executive Branch Appointments

An Obstacle Course on Capitol Hill?

by Burdett Loomis

“When you draw a line here and say, ‘no further,’ then you’ve basically stopped the work of the Senate. It isn’t a threat. It’s a reality.”

Senator Larry Craig, Republican Policy Committee Chair, June 2000

Bolstered by analyses from both journalists and academics, the conventional wisdom now holds that the Senate has become increasingly hostile to presidential appointees. Would-be judges, justices, ambassadors, commissioners, and executive branch officials are “borked” by vicious special interests and their Capitol Hill co-conspirators. Appointees are “held hostage” by senators who seek substantive trade-offs or the confirmation of their own favored candidates for judicial or regulatory posts. Senators place so-called “holds” on nominations, thus delaying matters interminably. All

in all, the Senate’s performance, at least as commonly portrayed, does little to enhance the appointment-confirmation process. Quite the contrary. The Senate, to recall Robert Bendiner’s description of more than 30 years ago, seems a major culprit in the lengthy and often distasteful politics of confirmation—a veritable “obstacle course on Capitol Hill.”

This characterization fits with our broader understanding of the Senate of the past 20 years. As detailed by political scientist Barbara Sinclair and her fellow congressional scholars, the Senate has become both highly individualized and extremely partisan. At first blush, such a pairing seems unlikely—would not senators in a highly partisan legislature subordinate their individual desires for the good of the entire partisan caucus? But the Senate, once a bas-

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VICTOR JUHASZ

tion of collegiality, has become less civil, less cordial—sometimes almost rivaling the raucous House of the 1990s in its testiness. The lengthy, increasingly bitter partisan stand-off over the final year of the Clinton administration has given further credence to the perception that the Senate has become deeply hostile to appointments from a Democratic executive.

Still, headlines, assumptions, and conventional wisdom can be wrong, to a greater or lesser extent. We might do well to examine the data on confirmations. Do Senate confirmations take longer than they used to, especially in the modern era? Are more nominations withdrawn or returned to the executive?

Second, we might well ask how Senate processes might be altered in a partisan, individualistic era, especially when the upper chamber, unlike the rule-dominated House, usually operates through the mechanism of unanimous consent—that is, a single senator's objection can delay, if not stop, the normal

in the review of executive personnel is but one example of that relationship. The Senate's role in the confirmation process was designed not to eliminate politics but to make possible the use of politics as a safeguard...a protection against tyranny." Circa the year 2000, one might well argue that more is going on than "protection against tyranny," but exactly what remains open to question.

The following discussion focuses on 329 top policymaking, full-time positions in the 14 executive departments that require presidential appointment and the approval of the Senate. Ambassadors, regulatory commission slots, military commissions, and federal attorneys are excluded.

Executive Branch Appointments and the Senate, 1981–99

To understand the magnitude of any "problem" with Senate confirmations of executive branch appointments, we need to know three things. First, how lengthy is the Senate confirmation

Because the available data do not allow for systematic explorations before the Reagan administration, over-time comparisons are limited. Still, some trends do begin to emerge.

First, the confirmation process has grown longer. In 1981, the Republican Senate took an average of 30 days to confirm Ronald Reagan's executive branch appointees; in 1993, the Democratic Senate took 41 days to confirm Bill Clinton's first nominees, an increase of 37 percent. Six years later, in the first session of the 106th Congress, the confirmation process had dragged out to 87 days, more than twice the 1993 figure and almost three times that of 1981. The comparisons are skewed somewhat by the Republican control of the Senate in 1999 and the less urgent, less visible nature of confirming appointees late in an administration, as opposed to the initial round of appointments that receive considerable attention given the need to put a government in place a few weeks after the November election.



The Senate, once a bastion of collegiality, has become less civil, less cordial—sometimes almost rivaling the raucous House of the 1990s in its testiness.

legislative process. Even if we find that the conventional wisdom is accurate and that presidential appointments often run into a congressional roadblock, there may be little that can be done within the legislative branch. Indeed, Christopher Deering's assessment of Senate confirmation politics, circa 1986, bears repeating: "The relationship between the executive and legislative branches...remains essentially political.... The Senate's role

process, and to what extent do some appointments take a disproportionately long time to be resolved? Second, how many appointments are withdrawn and returned? And third, how are appointments processed under differing conditions, such as divided government and various periods of a presidency (especially during the transition to a new administration as opposed to the remainder of a president's tenure)?

Still, the process has grown longer, both early and late in an administration. In 1992, for example, a sample of George Bush's appointments during the last year of his presidency (and facing a Democratic Senate) averaged 60 days for confirmation, in contrast to Clinton's 86 days in 1999 and early 2000. Thus the typical 1999 confirmation process averaged almost three months when Congress was in session. Taking

Table 1. Confirmed, Returned, and Withdrawn Executive-Branch Nominees, 1981–99

YEARS	NOMINEES	CONFIRMED NUMBER (PERCENT)	RETURNED NUMBER (PERCENT)	WITHDRAWN* NUMBER (PERCENT)
Bill Clinton				
1999	85	68 (80.0)	0	3 (3.5)
1997–98	207**	166 (80.2)	16 (7.8)	9 (4.3)
1995–96	79	59 (74.7)	19 (24.1)	1 (1.7)
1993–94	323	310 (96.0)	9 (2.8)	4 (1.2)
George Bush				
1991–92	136	111 (81.6)	21 (15.4)	4 (2.9)
1989–90	292	278 (95.5)	8 (2.7)	0
Ronald Reagan				
1987–88	159	131 (82.5)	24 (15.1)	4 (2.5)
1985–86	182	165 (90.7)	14 (7.7)	3 (1.7)
1983–84	111	93 (83.8)	18 (16.2)	0
1981–82	269	260 (96.7)	6 (2.2)	3 (1.1)

* In 1999, 14 appointments were carried over; in 1998, 9 recess appointments were made

** Included 16 carryover appointments

Sources: Various Congressional Research Service studies, 1983–2000, compiled by Rogelio Garcia.

into account the 34 days of late-summer congressional recess, the confirmation process of 1999 averaged 121 days—almost exactly four months. The positions, of course, did not necessarily remain vacant, because the 1998 Federal Vacancies Reform Act allowed acting officials to fill many slots. Still, the lengthening Senate confirmation process indicates that a problem does exist—all the more so given the increasing time that the president has taken to make appointments.

A second data set relates to the likelihood that a president's appointments will be confirmed. How often does the Senate return appointments to the president or cause nominations to be withdrawn? Again, looking at the rates under differing circumstances makes sense. The president is likely to do better with appointments he makes right after being elected than with any other, and divided government may affect confirmation rates.

As reported in table 1, Presidents Reagan, Bush, and Clinton fared about the same in winning confirmation for their nominees. All three won approval of more than 95 percent of their appointees in their administrations' first two years, but did less well for the rest of their tenure in office. To the extent that a trend emerges, it reinforces the inference that the Senate has put up more obstacles over time. Reagan's nominees were confirmed at an 86 percent clip between 1983 and 1988, whereas Clinton won approval for only 79 percent of his appointments. But Clinton faced a Republican Senate for the entire six-year stretch, while Reagan dealt with a Democratic chamber only in his last two years, when his confirmation rate fell to 82.5 percent (much like Bush's 81.6 percent success rate in 1991–92, under similar conditions).

A summary view of confirmations over the past two decades demonstrates that the Senate process has grown

longer, that divided government lowers confirmation rates a bit, and that the president's capacity to win Senate approval for his nominees declines modestly. At the same time, President Clinton did win confirmation of 96 percent of his nominees in the first two years of his administration, albeit with less dispatch than did Ronald Reagan in 1981.

This leads us to consider whether the Senate is truly the culprit here and, if it is, whether anything might be done to affect the way the chamber handles the confirmation process.

The Senate: Partisan, Individualistic, and Separate

Aside from anecdotal evidence of particular bitter confirmation fights, such as former Senator John Tower's failure to win confirmation as secretary of defense in 1989, or ineptly handled appointments, such as Lani Guinier and Zoe Baird in the Clinton transition, we have little systematic data on how the Senate

affects confirmation politics in the post-1980 era of increased individualism and stronger partisanship. Nevertheless, convincing evidence does exist that the Senate has become both more individualistic and more partisan. Barbara Sinclair, for example, reports steady growth in filibusters over the past 40 years, especially in the past 20, and Sarah Binder and Steven Smith demonstrate that the use of filibusters continues to reflect the policy goals of individual senators, groups of senators, and, at times, the minority party. Moreover, the Senate continues to consider itself a co-equal partner within the appointment process. As separation-of-powers scholar Louis Fisher observes, “The mere fact that the President submits a name for consideration does not obligate the Senate to act promptly.” Indeed, the Senate’s willingness to sit on a nomination may reflect its status in a “separate-but-equal” system.

Still, the unlikely combination of individualism and partisanship surely defines the contemporary Senate. As

And, notes Sinclair, by the late 1980s, “Senators were increasingly voting along partisan lines. In the late 1960s and early 1970s, only about a third of Senate roll call votes pitted a majority of Democrats against a majority of Republicans. By the 1990s, from half to two-thirds of roll calls were such party votes. ...By the 1990s a typical party vote saw well over 80 percent of the Democrats voting together on one side and well over 80 percent of the Republicans on the other.” In fact, in the 105th Congress, Senate party loyalty scores slightly exceeded those of the House, which has been seen as the more partisan chamber.

Unsurprisingly, the heightened individualism and partisanship has affected the confirmation of executive branch nominees. Guarantees by the Senate leadership to the contrary, every senator can place a “hold” on a nomination—delaying it, if not delivering a death sentence—though this tactic has been used more visibly on ambassadorial than on

Confirmation and the Senate

The great majority of presidential appointees to high-level executive positions win approval by the Senate, although the success rate hovers at about 80 percent once a president has initially constructed his administration. Adding to their uncertainty, these later appointees must wait an average of four months for the Senate to act, once it has received their nomination. For these nominees, the process is long, and the outcome uncertain. Add to this the partisan politicking and the intense scrutiny, and it is no wonder that some potential officeholders decline the honor of nomination.

Might the Senate smooth the way for future nominees? Given the profound changes in the chamber over the past 25 years—the great latitude allowed individual members and the intense partisanship that dominates much decisionmaking—it seems unlikely that reformers would profit much from attempting to reshape



Even noncontroversial nominations can fall victim to highly partisan Senate politics, as nominees are “held hostage” to other nominations, to appropriations bills, or to substantive legislation.

Sinclair summarizes, by the mid-1970s, the Senate “had become a body in which every member regardless of seniority considered himself entitled to participate on any issue that interested him for either constituency or policy reasons. Senators took for granted that they—and their colleagues—would regularly exploit the powers the Senate rules gave them.” Senators also emphasized “their links with interest groups, policy communities and the media more than their ties with each other.”

executive department appointments.

Even noncontroversial nominations can fall victim to highly partisan Senate politics, as nominees are “held hostage” to other nominations, to appropriations bills, or to substantive legislation. Where there is real controversy, as with the appointment of Bill Lann Lee to head the Justice Department’s civil rights division, partisan conflict increases and extends beyond Congress to the Senate’s relationship with the White House.

Senate procedures. The best circumstance for speedier and more successful confirmations would be for the same party to control both the Senate and the presidency. Ronald Reagan did better in the mid-1980s with a Republican Senate than did either George Bush or Bill Clinton with opposing-party control in the 1990s. Bridging the separate institutions may be more valuable than seeking to reform an institution that has proven highly resistant to planned change. ■

The Senate as

a BLACK

HOLE

by Sarah A. Binder

Lessons
Learned
from the
Judicial
Appointment
Experience

For many a presidential appointee, the Senate must loom like an institutional black hole—an abyss that engulfs even the most luminous nominee. That impression is, in fact, mistaken. Most presidential nominees emerge from the Senate confirmation process and are eventually confirmed. But for many recent nominees, the experience has been long and unsettling.

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Richard Paez, for example, a federal district court judge selected by President Clinton to fill a vacancy in 1996 on the pivotal Ninth Circuit Court of Appeals, had received the highest rating possible from the American Bar Association and been confirmed just two years earlier by a Democratic Senate for a seat on a federal district bench. Yet it took a Republican Senate more than four years to confirm his elevation to the appellate bench.

Is Paez's confirmation experience typical? Are recent delays in the confirmation process for judicial appointees due mostly to antagonisms between President Clinton and the Republican Senate? Or are broader institutional and electoral trends at work? If so, what can other presidential appointees learn from the experience of judicial nominees? Although judges' lifetime tenure on the federal bench and their broad policy jurisdiction distinguishes judicial nominees from all other appointees, no presidential appointee can afford to ignore the institutional and partisan hurdles that the Senate erects against presidential appointees seeking public service.

The Senate Record

Judge Paez's drawn-out confirmation, though extreme, reflects a broader trend under way in recent Congresses. Figure 1 shows how the confirmation process lengthened over the last half of the 20th century for all judicial nominees eventually confirmed by the Senate. Whereas the Senate took just one month to confirm the average judicial nominee during Ronald Reagan's first term, by the end of Clinton's second term the average wait had grown sixfold. At least one-third of Clinton's judicial nominees in the 105th Congress (1997–98) waited more than six months to be confirmed, with the longest wait for a confirmed nominee stretching nearly the entire length of the Congress.

The delays Clinton weathered in getting his nominees confirmed to the bench are not simply a reflection of his polarized relations with a conservative Republican Senate. During the mid-1980s a Democratic Senate took an average of nearly four months to confirm judicial nominees of Presidents Reagan and Bush. And during 1993 and 1994, a Democratic Senate averaged three months in confirming Clinton's nominees.

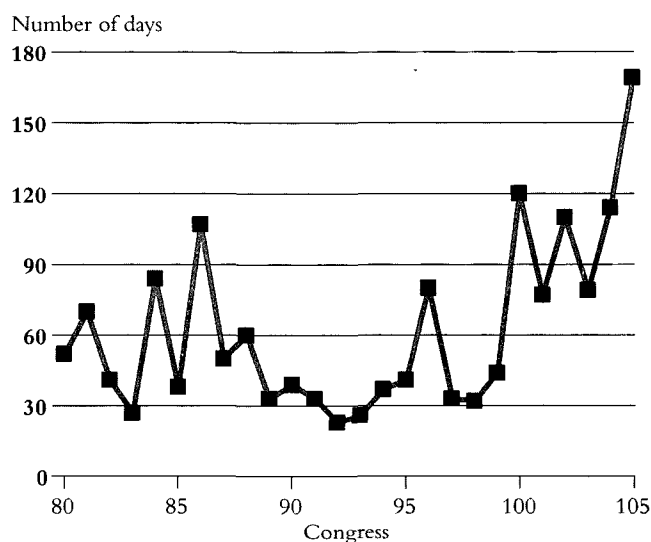
Indeed, although the politics of recent confirmations might be especially polarized, contentious relations between the Senate and the president go back a long way. During Dwight Eisenhower's last term, for example, it took the Democratic Senate led by Lyndon Johnson an average of four months—and sometimes as long as seven months—to confirm judicial nominees.

The Politics of Senate Delay

By any measure, the Senate's performance in dispensing advice and consent varied widely over the last half of the 20th century. How do we account for the uneven performance? Pundits assessing the Senate's treatment of Clinton's nominees typically point first to the poisoned relations between conservative Republicans and Clinton. It is often suggested that personal and political antagonisms between Clinton and hard-

Figure 1.

Average Length of Confirmation Process for Successful Judicial Nominees, 1947–98



right conservatives led Republican senators to hold up unduly even the most highly qualified nominees. This may account for some of the delay, but hardly for all, since the trend toward lengthy confirmation proceedings was well under way before Clinton took office in 1993 and Republicans gained control of the Senate after the 1994 elections.

Others suggest that extreme delays encountered by judicial nominees in the 106th Congress owed much to the approaching presidential election. With control of both the Senate and the White House up for grabs in November 2000, it was natural for Republican senators to approach their confirmation duties with particular caution. Rather than confirming an outgoing Democratic president's last judicial nominees, pragmatic politics would dictate that Republicans save these lifetime appointments for a president of their party. Not surprisingly, at the end of the 106th Congress, 40 judicial nominees remained in limbo. Most had not even received a hearing before the Senate Judiciary panel.

The historical record confirms that an approaching presidential election affects the politics of advice and consent. Over the past 50 years, the Senate has treated judicial nominations submitted or pending during a presidential election year differently than it has treated others. First, it has taken longer to confirm nominees pending before a presidential election than those submitted earlier in a president's term. Second, and more notably, presidential-election-year nominees are much less likely to be confirmed, even controlling for the presence of divided government and the quality of the nominee. For all judicial nominations submitted between 1947 and 1998, nominees pending in the Senate before a presidential election were 25 percent less likely to be confirmed than nominees submitted earlier in a president's term.

Divided party control of the White House and Senate also slows the confirmation process. Judges are policymakers as well as judicial arbiters with life tenure, giving senators good

cause to scrutinize the views of all potential federal judges. Because presidents overwhelmingly seek to appoint judges from their own party, Senate scrutiny of judicial nominees should be particularly intense when two different parties control the White House and the Senate. It is no surprise then that the Senate has taken nearly 60 percent longer to confirm nominees during periods of divided government than during unified control. Judicial nominees are also less likely to be confirmed during divided government, even controlling for the quality of the nominee and other relevant factors.

Party politics also affects the course of nominations when presidents seek to fill vacancies on appellate circuits whose judges are evenly balanced between the two parties. Senate majorities are especially reluctant to confirm nominees to such courts when the appointment would tip the court balance in favor of a president from the opposing party. One of the hardest hit such courts is the Sixth Circuit Court of Appeals, straddling populous Midwestern states such as Michigan and Ohio. A quarter of the bench is vacant, including one seat declared a judicial emergency after sitting empty for five years. The Senate slowdown on appointments to the circuit likely was motivated by the strategic importance of the circuit, since confirming Clinton's nominees would have deprived a Republican president of the opportunity to move a balanced court into the conservative camp. In short, electoral and partisan dynamics strongly shape the Senate's conduct of advice and consent, making it difficult for presidents to stack the federal courts as they see fit.

Institutional Culprits

If elections alone were to blame for slow confirmations, presidential appointees might have little opportunity to hasten matters along. But the process of advice and consent is equally affected by an array of Senate rules, each of which distributes power in a unique way across the institution. Understanding chamber and committee rules is thus critical for any nominee preparing for Senate confirmation.

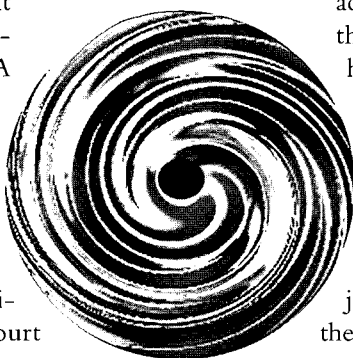
The first institutional hurdle for any nominee is the committee system charged with scrutinizing presidential appointees. Senate rules affect judicial

nominees in committee in two ways. First, by tradition, senators from the home state of each nominee cast first judgment on potential appointees. The veto power of home state senators is institutionalized in Judiciary panel procedures, which allow them to register "blue slip" objections to judicial nominees referred to the committee. Although "negative" blue slips no longer kill a nominee outright, they weigh heavily in the committee chair's assessment of whether, when, and how to proceed with a nominee.

Historically, big ideological differences between the president and the home state senator for at least appellate nominees have led to longer confirmation proceedings than normal, confirming the power of home state senators to affect panel proceedings. In practical terms, the strong support of a nominee's home state senator is essential in gaining committee approval. Given the often fractured attention of the Senate and the willingness of senators to heed the preferences of the home state senator, having a strong advocate in the Senate with an interest in seeing the nomination proceed is critical. Although home state senators for executive branch nominees lack the leverage of a "blue slip," securing a strong Senate sponsor can go a long way in greasing the skids in committee.

Second, Senate rules grant considerable procedural powers to committee chairs. Because of the generally low salience of most judicial nominations, the Senate largely defers to the Judiciary Committee's judgment on whether and when to proceed with a nomination. The committee chair, who has the power to convene hearings and to hold a vote to report a nomination to the chamber, thus holds great discretion over the fate of each nominee. Not surprisingly, ideological differences between the Judiciary panel chair and the president affect discernibly the course of judicial nominations. The greater the ideological differences, the longer it takes the committee to act. And because all committee chairs retain agenda-setting powers, executive branch appointees are well served by establishing rapport with and support from the relevant panel chair.

Once approved by committee, however, a nomination must clear a second broad institutional hurdle: making it onto the Senate's crowded agenda. By rule and precedent, both majority and minority party coalitions can delay



**No presidential
appointee can
afford to ignore
the institutional
and partisan
hurdles the
Senate erects
against
appointees
seeking public
service.**

nominations after they clear committee. Because the presiding officer of the chamber gives the majority leader priority in being recognized to speak on the Senate floor, the majority leader has the upper hand in setting the chamber's agenda, especially given his control of the executive session agenda, the arena in which nominations may be called up for confirmation. When the president's party controls the Senate, nominations are confirmed more quickly; under divided control, nominations can be kept off the floor by the majority leader. Such procedural advantages clearly enhance the importance of support from the majority leader in shaping the fate of presidential appointees.

But the majority leader's discretion over the executive session agenda is not wielded without challenge, as nominations can be filibustered. That possibility usually motivates the majority leader to seek unanimous consent of the full chamber before bringing up a nomination. As a result, nominations are unlikely to clear the Senate without the endorsement of the minority party.

Given the *de facto* requirement of minority party assent, the party opposing the president retains power to affect the fate of nominees even when it does not control the Senate. As policy differences increase between the president and the opposing party, that party is more likely to exercise its power to delay nominees. Even controlling for the quality of the nominee and the many electoral factors shaping the confirmation process, ideological differences across the branches significantly slow and often derail judicial nominees.

Presidents and the Senate

Although presidents lack formal means of pushing nominations through to confirmation, they are not powerless in shaping how the Senate dispenses advice and consent. In the first place, better qualified nominees tend to sail more quickly through the Senate. At least in recent decades, a higher rating from the American Bar Association has often cut the time it takes judicial nominees to get confirmed and increased the probability of confirmation. The type of nominee appointed by the president, in other words, helps smooth the way to confirmation.

Presidents can also have tremendous impact on the fate of a nomination by strategically timing its referral to the Senate. As noted, nominations made earlier in a president's term tend to move more swiftly than

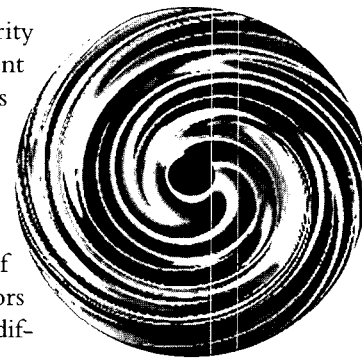
those made in a presidential election year. Nominations also take longer as the Senate gets mired in considering scores of appointees. The fewer nominees pending, the more quickly a nominee will be confirmed.

Perhaps surprisingly, there is little evidence that more popular presidents are able to get their nominees approved more quickly. That may be why presidents only rarely use their bully pulpit to draw attention to the plight of their nominees. In short, presidents have some influence over the speed of advice and consent, but their influence is exercised only at the margins of the legislative arena.

Help from the Stars?

It has been said that the Senate is composed of 100 atomic bombs, each of which can be triggered on a second's notice. Perhaps—though the dozens of judicial nominees recently detained by senators in pursuit of assorted policy and political goals would suggest that a hostage-taking metaphor would be equally apt. Senator James Inhofe of Oklahoma certainly set a new standard in the wars of advice and consent when he held more than 30 judicial nominees hostage in a battle with the president over an unrelated recess appointment. Whether nominees are taken hostage as each party seeks action on blocks of nominees hanging in limbo before the Senate or whether nominees are simply used as pawns by senators trying to influence other matters of import to them, the low and uneven salience of most nominations encourages such hijacking, as senators rarely pay a political cost for holding up presidential appointees.

Though the Senate's pattern of advice and consent may at times seem encumbered neither with rhyme nor with reason, more careful scrutiny suggests that Senate rules widely and predictably allocate influence across the Senate. With senators often willing to exploit their procedural rights, swift confirmation of presidential appointees, however well qualified, is rare. But for nominees navigating the shoals of the chamber, understanding the ways and means of Senate institutions is essential. Committee chairs, pivotal senators, and majority and minority party leaders alike wield considerable influence over the fate of presidential nominees. Cultivating support from these critical institutional players is essential in building a deliberate path toward confirmation. And a little help from the stars doesn't hurt one bit. ■



It has
been said
that the
Senate is
composed of
100 atomic
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of which can
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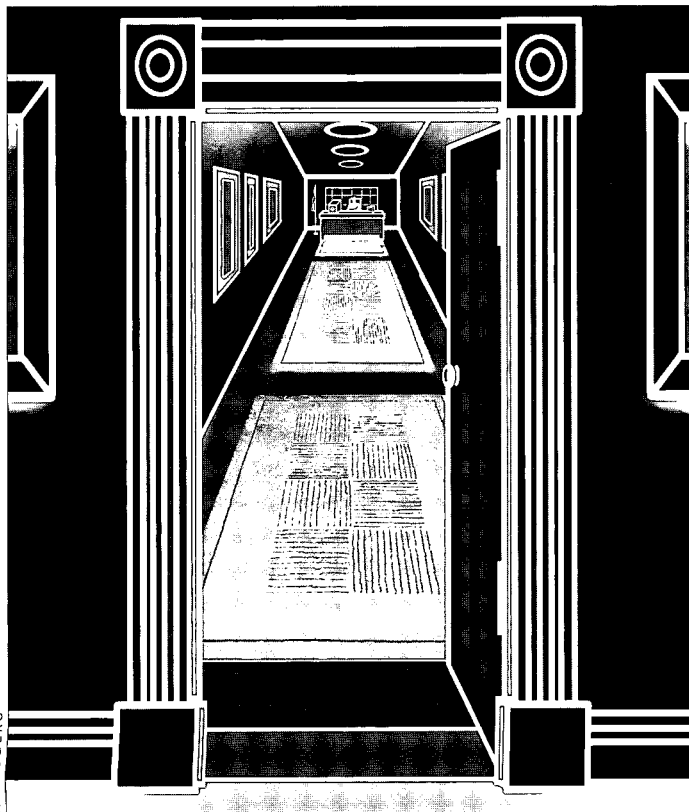
RECRUITING Executive Branch LEADERS

The Office of Presidential Personnel

by James P. Pfiffner

"I had hardly arrived [in Washington] before the door-bell began to ring and the old stream of office-seekers began to pour in. They had scented my coming and were lying in wait for me like vultures for a wounded bison. All day long it has been a steeple chase, I fleeing and they pursuing."

President Garfield, in a letter to his wife, May 29, 1877



Despite the demise of the spoils system about which Garfield was complaining, the demand for government jobs after each presidential election continues to be a hallmark of American politics. It took the assassination of President Garfield by one of the vultures, deranged office-seeker Charles Guiteau, to galvanize Congress to pass the Pendleton Act in 1883 establishing the merit system of civil service. But remaining atop the executive bureaucracy was and is a layer of political officers, a layer that has grown thicker in recent years.

The Constitution vests the "executive power" in the president and commands that "the laws be faithfully executed." To fulfill this responsibility each president appoints the major officers of the government. The government's ability to carry out its primary functions depends crucially on capable civil servants, whose effectiveness is intimately tied to the quality of the leadership of the executive branch, that is, presidential appointments.

Each new president who comes to office appoints thousands of men and women to help lead the executive branch. While the career civil servants who work under their direction are recruited on a continual basis by the Office of Personnel Man-

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agement and individual agencies, the leaders themselves are recruited by the White House Office of Presidential Personnel, which is formed anew by each president. The obligations of the OPP are threefold—to serve the nation by recruiting executive branch leaders, to serve the president by finding qualified loyalists, and to shepherd nominees through the sometimes treacherous appointment process.

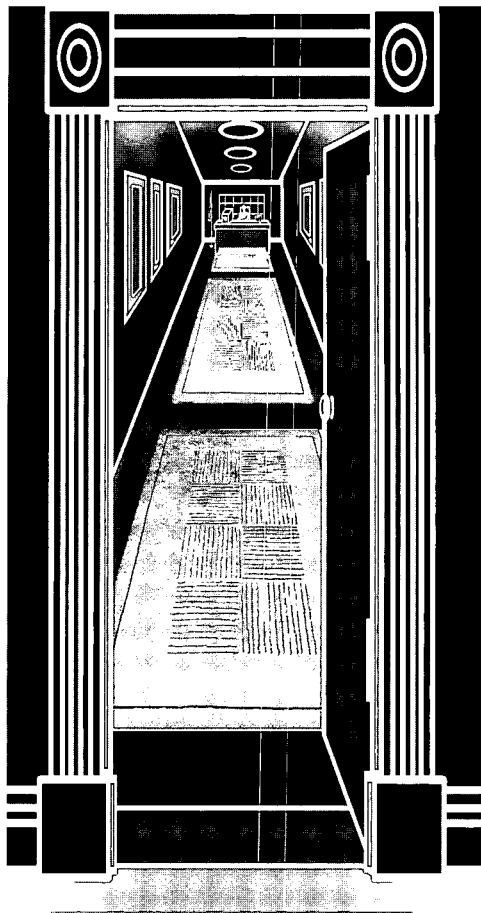
Serving the Nation

Until a few decades ago presidents lacked the personal staff to control the process by which appointees were selected. In the 19th and first half of the 20th century, presidential appointments were dominated by the political parties. As presidents began to assert more personal control, they slowly increased the institutional capacity of the White House to recruit their own nominees for positions in the government and gradually superseded the dominance of the political parties.

The presidential recruitment function was transformed in the second half of the 20th century in four ways. First, an increasingly professionalized executive recruitment capacity replaced the political parties as the primary source of appointees. Second, this capacity, which began with one person in charge in the Truman administration, was gradually institutionalized as a regular component of the White House Office headed by an aide with the title of assistant to the president. Third, the reach of the office was extended not only to presidential appointments but also to what are technically agency head appointments (noncareer Senior Executive Service and Schedule C positions). And finally, the office grew from six people in the Kennedy administration to more than 100 at the beginning of the Reagan and Clinton administrations. Thus an institutionalized OPP is handling an increasing number of political appointments for the president.

The positions for which the OPP recruits are the most important in the executive branch: the cabinet and subcabinet, leaders of independent agencies, and regulatory commissioners. Together with ambassadors (185), U.S. attorneys (94), U.S. marshals (94), and others, the total number of presidential appointments requiring Senate confirmation is 1,125.

Additional lower-level political appointments are available to each administration to help implement its priorities. For example, noncareer appointments in the Senior Executive



The OPP is often pushed to or beyond its limits in meeting the needs of the president, the appointees, and the country.

Service (created in 1978) can by law amount to 10 percent of the total career SES; today they number 720. Schedule C positions, about 200 when first created in 1953, now number 1,428. These latter two categories, technically made by cabinet secretaries and agency heads, have been controlled by the OPP since the Reagan administration. Though less important than presidential appointments, they place an added burden on the OPP, which must also advise the president on hundreds of part-time appointments, many to boards and commissions that may meet several times a year.

Given the growing number of political positions, along with the OPP's increasing scope of authority, it is not surprising that the pace of appointments has slowed in the past four decades (see table 1).

Serving the President

The primary task of the OPP—helping the president match the right nominee with the right position—is not simple. The personnel office must be ready to go the day after the election, so advance planning is crucial, but often neglected in the pressure of the campaign. The onslaught of office seekers begins immediately, and the OPP must be ready to handle the volume with some political sophistication. The delay in establishing the personnel recruitment process is one of the reasons that the 2000–01 transition has been particularly challenging. A process must be set up to strike the right balance between

the president's personal attention and the need to delegate much of the recruitment task to the OPP. Intense pressure for appointments from the presidential election campaign, Capitol Hill, interest groups, and the newly designated cabinet secretaries will buffet the process. Perhaps most important, the newly elected president's policy agenda will not be fully implemented until most of the administration's appointees are confirmed and in office.

Political patronage has a long and colorful history in the United States. The purposes of patronage appointments are to reward people for working on the campaign and for the political party and also to ensure that the government is led by people who are committed to the political philosophy and policy agenda of the president. As long as these purposes are consistent with putting qualified people in charge of government programs, there is no problem.

But from the perspective of the OPP, demands for patronage are frustrating. Pressures for appointments come from all sides: everybody, it seems, wants to ride the president's coattails into Washington jobs. According to Pendleton James, President Reagan's assistant for presidential personnel in 1981-82, "...being the head of presidential personnel is like being a traffic cop on a four-lane freeway. You have these Mack trucks bearing down on you at sixty miles an hour. They might be influential congressmen, senators, state committee chairmen, heads of special interest groups and lobbyists, friends of the president's, all saying 'I want Billy Smith to get that job.'" Thus the OPP has to deal with external pressures for appointments, but it also faces internal battles with cabinet secretaries over subcabinet appointments.

From the White House staff perspective, subcabinet positions are presidential appointments and should be controlled by the White House. But from the cabinet secretary's perspective, these appointees will be part of his or her management team, and the secretary will be held accountable for the performance of the department, so substantial discretion should be delegated to department heads. Cabinet secretaries also suspect that the White House OPP is more concerned with repaying political debts than with the quality of subcabinet appointments.

Chase Untermeyer, President Bush's director of presidential personnel, voiced the White House perspective when he suggested that the president introduce his assistant for presidential personnel to his newly appointed cabinet secretaries as someone who has "my complete confidence," someone who "has been with me many years and knows the people who,...while you were in your condo in Palm Beach during the New Hampshire primary,...helped me get elected so you could become a cabinet secretary." And, the president should conclude, he will depend on his assistant "to help me see that those people who helped us all get there are properly rewarded."

The perspective of the cabinet secretary was expressed by Frank Carlucci, secretary of defense in the Reagan administration, whose advice to newly appointed cabinet secretaries was, "Spend most of your time at the outset focusing on the personnel system. Get your appointees in place, have your own political personnel person, because the first clash you will have is with the White House personnel office. And I don't care

whether it is a Republican or a Democrat...if you don't get your own people in place, you are going to end up being a one-armed paper hanger."

What the White House sees as a presidential prerogative and opportunity to reward loyal supporters of the president, the cabinet secretary sees as a chance to mold a management team. The OPP has to strike the right balance for each president.

Serving Presidential Nominees

While OPP's most important duties are to the nation and the president, it also has obligations to the individual Americans who want to serve their country. U.S. citizens have a venerable tradition of serving in government for a few years and then returning to private life. The practice brings in people with new ideas and much energy to participate in governing their country. Many of these idealistic Americans, however, have recently had less than inspiring experiences with their nominations to high office.

When past and present presidential appointees were asked their general impressions of the nomination and confirmation process, 71 percent thought the process was "fair," but many also had negative reactions. Twenty-three percent found it "embarrassing"; 40 percent "confusing"; and 47 percent a "necessary evil." Most nominees began by seeing public service as an honor, but were later put off by the intrusiveness of the process in delving into their personal finances, the investigations into their backgrounds, and the time it takes to be confirmed.

Becoming a presidential appointee necessitates collecting much information for financial disclosure forms. Of appointees who served between 1984 and 1999, 32 percent found gathering the information difficult or very difficult (compared with 17 percent of appointees from 1964 to 1984). Completing the financial disclosure forms was so complicated that 25 percent of appointees had to spend between \$1,000 and \$10,000 for outside expert advice; 6 percent had to spend more than \$10,000.

From surveys of past appointees, it is clear that the nomination and appointment process has room for improvement. Many problems cited by respondents, however, are not hard to alleviate. One theme that came through clearly is that, once contacted by the OPP, many potential nominees felt that they had been abandoned without sufficient information about how the process would unfold. Chase Untermeyer pointed out "the sad truth" that "often nominees feel abandoned." He noted how important it is for a nominee "to have somebody holding his or her hand in getting through the process." The OPP should allocate sufficient personnel to keeping nominees informed of the status of their nominations and helping them through the difficult aspects of disclosure forms and Senate confirmation.

Thus the dilemma of the modern White House personnel operation. Far larger and more professional than ever before, the number of appointees under its purview has grown so huge and the appointment process itself so procedurally thick and politically vexing that the OPP is often pushed to or beyond its limits in meeting the needs of the president, the appointees, and the country it is expected to serve. ■

Table 1. Length of Appointment Process, As Reported by Appointees

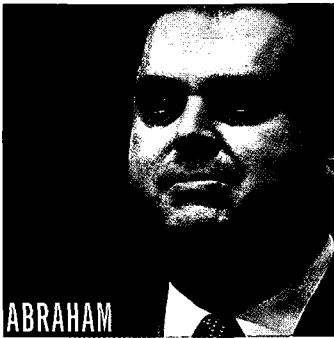
LENGTH OF PERIOD	1964-84	1984-99
1 or 2 months	48%	15%
3 or 4 months	34%	26%
5 or 6 months	11%	26%
More than 6 months	5%	30%

Source: Paul C. Light and Virginia L. Thomas, *The Merit and Reputation of an Administration* (Presidential Appointee Initiative, 2000), p. 8. The number of appointees surveyed was 532 for 1964-84, 435 for 1984-99.

Placing the Call to Service



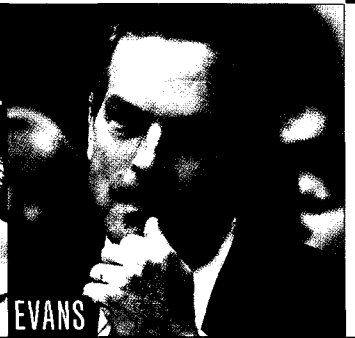
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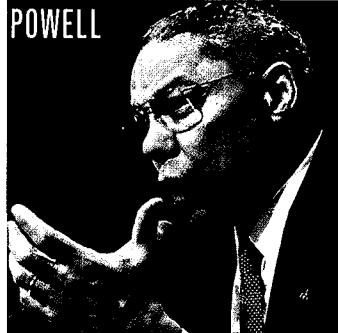
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The Founding Fathers designed America's government to be led by citizens who would step out of private life to serve their nation and then return to their communities ready to recruit the next generation of public servants. Their hopes extended to what Philadelphia's Benjamin Franklin called the "posts of honor" in the executive branch. Watchful lest private gain rather than the public interest tempt citizens to take these positions, Franklin proposed that executive officers receive "no salary, stipend, Fee or reward whatsoever for their service." (The Constitutional Convention quietly tabled his proposal without debate.)

Thomas Jefferson also had a high regard for these executive posts, believing quality appointments as important to the public's confidence in government as the laws that its elected lead-

ers would enact. "There is nothing I am so anxious about as good nominations," he wrote nearly two hundred years ago at the dawn of his presidency.

The passage of two centuries has seen the young nation mature into the world's strongest government. But its need for talented citizens to fill its posts of honor remains undiminished. And, fortunately, the nation's civic leaders remain willing to serve. That is most certainly the message from two surveys of past and potential appointees conducted on behalf of The Presidential Appointee Initiative.

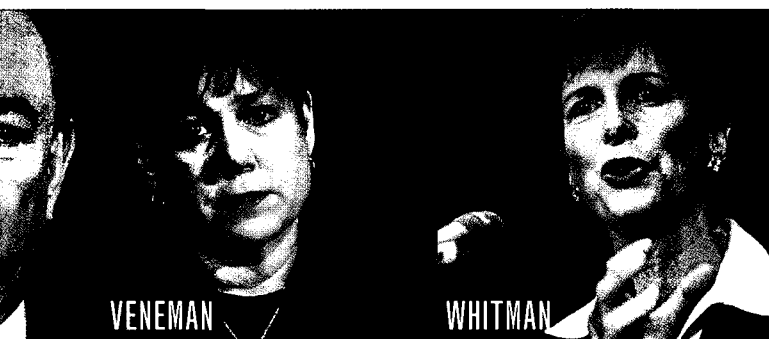
Of 435 senior-level appointees from the Reagan, Bush, and Clinton administrations interviewed during the winter of 1999-2000, more than half said they would strongly recommend presidential service to a good friend. And of 580 civic and corporate leaders interviewed during the summer and fall of 2000, almost three-quarters said that presidential service would be both an honor and an opportunity to make a difference.

Paul C. Light is vice president and director of the Brookings Governmental Studies program and senior adviser to The Presidential Appointee Initiative.



How Past and Future Presidential Appointees View the Appointment Process

by Paul C. Light



But if the spirit of service is strong among America's leading citizens, the presidential appointment process is weak. Past appointees view it as a burden at best, an ordeal at worst. They report unnecessary delays and frustration at both ends of Pennsylvania Avenue. And the civic leaders who make up the pool from which future appointees will be drawn see the process as confusing, embarrassing, and unfair. Unless something is done soon to improve the manner in which presidents make their appointments, fewer and fewer of the nation's most talented leaders will accept the call to service.

The Willingness to Serve

During the past summer and fall, Princeton Survey Research Associates, a nationally recognized opinion research firm, conducted telephone interviews with a cross-section of U.S. civic and corporate leaders on behalf of The Presidential Appointee Initiative. The 580 respondents included Fortune 500 executives, college and university

presidents, chief executive officers of the nation's largest nonprofits, think tank scholars, lobbyists, and state and local government officials.

The vast majority of the respondents were very or somewhat favorably inclined toward serving as a presidential appointee. Seventy-two percent said that such service would be an honor. Most also saw it as a way to earn heightened respect from friends, family, and neighbors, as well as a way to increase their ability to make a difference. When asked about the benefits of service, they also saw solid returns on their investments (see table 1). Most thought presidential service would give them valuable contacts, open future leadership opportunities, and increase their earning power, all at a relatively low cost in terms of lost contacts and promotions and difficulties returning to their careers afterward.

This is not to say that these civic and corporate leaders saw presidential service as either lucrative or easy. Few of the corporate, academic, and nonprofit executives in the sample

ALL PHOTOS AP/WIDE WORLD

Table 1. Benefits and Costs of Service, as Perceived by Civic Leaders, by Group

PERCENT WHO AGREE	TOTAL	FORTUNE 500 EXECUTIVES	UNIVERSITY PRESIDENTS	NON- PROFIT CEOs	THINK TANK SCHOLARS	LOBBYISTS	GOVERN- MENT OFFICIALS
Benefits of service include:							
Make valuable contacts	97	95	96	94	99	98	99
Increase future leadership possibilities	83	73	80	73	84	95	93
Increase earning power	61	46	41	46	72	80	79
Costs of service include:							
Lose valuable contacts	10	14	10	11	8	11	5
Risk losing promotions or other career advancement	23	43	19	19	24	22	13
Prevent a return to career	21	32	30	18	15	8	20

Source: "Posts of Honor: How America's Corporate and Civic Leaders View Presidential Appointments," Paul C. Light and Virginia L. Thomas (PAI, January 2001). Total number surveyed was 580: 100 Fortune 500 executives, 100 university presidents, 85 nonprofit CEOs, 95 think tank scholars, 100 lobbyists, and 100 state and local government officials. Data reflect percentage of civic leaders surveyed who agree or agree strongly.

Table 2. Impact of Reforms on Attractiveness of Presidential Appointment, as Perceived by Civic Leaders, by Group

PERCENT WHO SAY EACH REFORM WOULD MAKE AN APPOINTMENT MORE ATTRACTIVE	TOTAL	FORTUNE 500 EXECUTIVES	UNIVERSITY PRESIDENTS	NON- PROFIT CEOs	THINK TANK SCHOLARS	LOBBYISTS	GOVERN- MENT OFFICIALS
Reform							
Make financial disclosure requirements easier to meet	35	47	33	24	34	46	23
Make conflict-of-interest laws easier to meet	36	53	30	18	30	62	20
Increase pay	71	57	69	75	72	77	74
Simplify the process	73	80	74	72	78	79	58
Make it easier to return to previous job	67	68	70	77	64	70	56

Source: Same as table 1. Data reflect percentage of civic leaders who say each reform would make a presidential appointment somewhat or much more attractive.

expected it to increase their earning power, no doubt because they were already at the top of their salary scales. Think tank scholars, lobbyists, and state and local government officials did see future potential gains in salary, either through their increased value to their home institutions or through their increased ability to move elsewhere in their fields.

The three groups of executives also associated service with higher costs. Corporate and academic chiefs were more concerned than other respondents that they might be unable to return to their careers after presidential service, and corporate CEOs were far more apprehensive about losing promotions and other opportunities for career advancement. Unlike most think tanks, which have long traditions of welcoming former colleagues home after service in the executive branch, the corporate and academic doors tend to swing shut behind their departing chiefs.

Moreover, all six groups worried about the potential disruption of a move to Washington, D.C. They cited high real estate prices, commuting times, and problems relocating spouses. More than half said that living in Washington compared somewhat or much less favorably to living in their current residences, and 45 percent said that relocating their spouse would be very or somewhat difficult.

Views of the Nomination and Confirmation Process

As detailed elsewhere in this issue, the process by which those appointees are invited to serve is almost as bad as it can be. It begins with a 60-page stack of forms asking repetitive and intrusive questions, continues with an FBI full-field investigation that can take weeks or even months to complete, and concludes with a Senate inquiry often filled with partisan acrimony. It assumes, as one former White House chief coun-

sel remarked last fall, that all appointees are “innocent until nominated.” It also favors Washington insiders and those with enough money to hire outside legal and financial advisers.

Potential appointees are getting the message. America’s civic and corporate leaders have been watching what happens to presidential appointees, whether through the experiences of friends and colleagues or through reports in the news media. They do not like what they see. Even more than past appointees, potential appointees called the process embarrassing, a necessary evil, and confusing. Only 43 percent of all potential appointees described the process as fair, as compared with 71 percent of past appointees.

Corporate leaders took a particularly negative view. Thirty percent said the word “confusing” described the process very well, compared with just 15 percent of college and university presidents and 13 percent of state and local officials. Corporate leaders also were more likely to describe the process as both a necessary evil and embarrassing, perhaps acknowledging that their financial holdings create the potential for substantial embarrassment as the media cull through the required financial disclosure forms.

Potential appointees were also harsher than past appointees in their judgment of both the White House and the Senate. Whereas 64 percent of past appointees believed the White House handles nominees reasonably and appropriately, only 42 percent of potential nominees agreed. And whereas 46 percent of past appointees said the Senate also acts reasonably and appropriately, only 28 percent of potential nominees thought so.

Past and potential nominees did agree on one thing. Both groups believed that the current process is uneven at best in recruiting talented people to serve. Only 11 percent of past appointees and 14 percent of potential appointees said that

The most significant selling point for service is that it is a post of honor in which individual citizens can make a difference for their country.

current appointees represent the best and brightest America has to offer, while 79 percent of past and 75 percent of potential nominees described current appointees as a mixed lot, with some highly talented and others lacking the skills and experience their positions require.

Paths to Improvement

Past and potential appointees also agreed broadly on how to improve the process, starting with providing information on how it works. The demand is unmistakable: 39 percent of Reagan, Bush, and Clinton appointees either got insufficient information from the White House or got none at all, while 47 percent of the potential appointees knew little or nothing about how the process works. And having that information made a big difference. Past appointees who were well informed about the process were more likely than those who

were not to describe it as fair and not embarrassing.

Both past and potential appointees also wanted a simpler, faster process. Of the Reagan, Bush, and Clinton appointees, 37 percent recommended streamlining the process and 28 percent favored accelerating action. Of the potential appointees, 73 percent said that simplifying the process would make a presidential appointment more attractive.

Interviews with potential appointees also highlighted other reforms that would make service more attractive, notably increasing pay and making it easier for them to return to their previous jobs after they serve (see table 2). Interest in particular reforms varied. Lobbyists, for example, were most interested in higher pay, while nonprofit executives were most interested in being able to return to their previous careers.

Making the Case for Service

The call to service might resonate more if employers were more encouraging toward presidential appointments. Roughly half of the potential appointees interviewed said that their employers would encourage them strongly or somewhat to take a presidential appointment. Yet employer support for presidential service was uneven. Only 10 percent of Fortune 500 executives and university presidents and 18 percent of nonprofit CEOs said their employers would offer strong encouragement to serve, compared with 44 percent of think tank scholars, 36 percent of lobbyists, and 33 percent of government officials.

What could make more difference than anything else, however, would be for America’s presidents themselves to reach out to the nation’s most talented civic and corporate leaders. According to statistical analysis of the telephone surveys, respondents who are most favorably inclined toward presidential service are those who see it as a way to make a difference, who see it as an honor, and who view the appointment process as fair. That suggests three simple ways to enhance the case for service.

First, presidents should talk incessantly about how presidential appointees can make a difference through their work, thereby emphasizing one of the great advantages of public as against private life.

Second, presidents should remind appointees of the honor involved in service to one’s country. Old-fashioned though they may be, patriotism and the love of country are still powerful motivators for public service.

Third, presidents—along with the U.S. Senate—should do everything possible to simplify, streamline, and accelerate the manner in which presidential appointees are nominated and confirmed. Potential appointees who view the current process as unfair are much less likely to look favorably on an appointment, no matter how great the honor or the impact.

Presidential service has other advantages, not least the ability to make valuable contacts, enhance future earnings, and strengthen leadership prospects. Still, the most significant selling point for service is that it is a post of honor in which individual citizens can make a difference for their country. Presidents should never stop reminding the nation of that fact. ■

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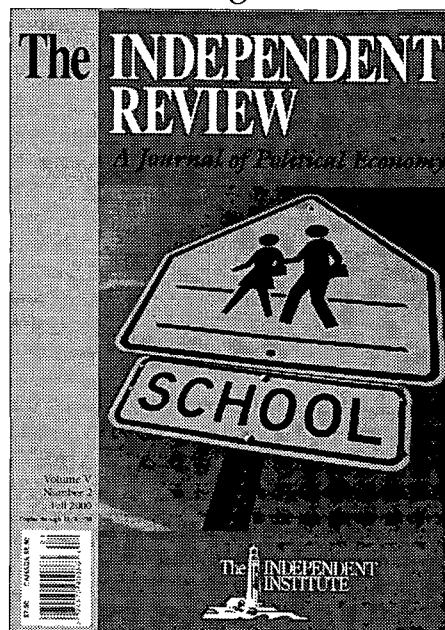
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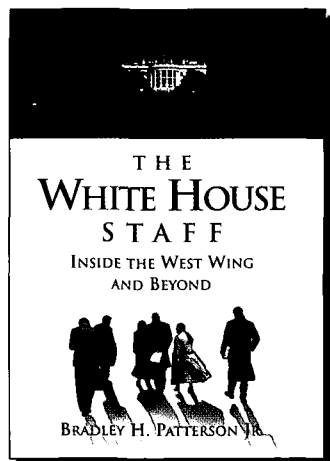
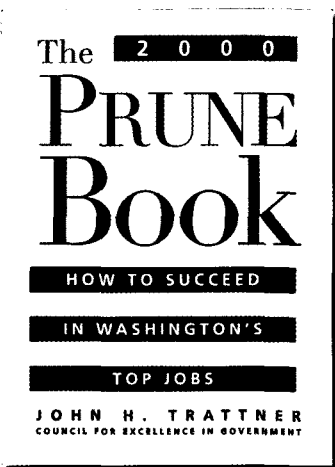


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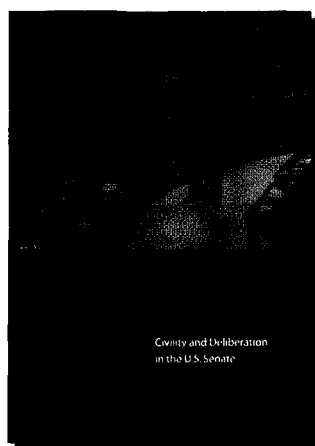
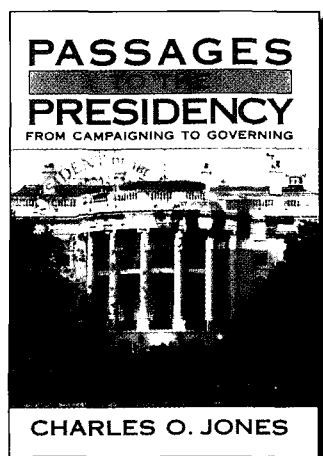
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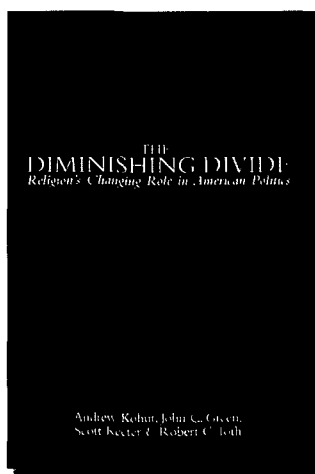
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That's why the Brookings Institution created The Presidential Appointee Initiative (PAI).

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With support from The Pew Charitable Trusts, PAI is working to encourage talented citizens to seek and accept presidential appointments and to build support for reforms that will simplify and expedite future appointments.

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To learn more about PAI, or to access the *Survivor's Guide* and the *Appointee Resource Center*, please visit www.appointee.brookings.org



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